

Title 63M. Governor's Programs

Chapter 2

Utah Science Technology and Research Governing Authority Act

Part 1

General Provisions

63M-2-101 Title.

- (1) This title is known as "Governor's Programs."
- (2) This chapter is known as the "Utah Science Technology and Research Governing Authority Act."

Amended by Chapter 283, 2015 General Session

63M-2-102 Definitions.

As used in this chapter:

- (1) "Commercialization revenues" means dividends, realized capital gains, license fees, royalty fees, and all other revenues received by a university as a result of commercial applications, inventions, or intellectual property developed from the USTAR initiative, less:
 - (a) the portion of revenues allocated to the inventor; and
 - (b) expenditures incurred by the university to legally protect the intellectual property.
- (2) "Executive director" means the person appointed under Section 63M-2-301.
- (3) "Research buildings" means any of the buildings listed in Section 63M-2-201.
- (4) "Research universities" means the University of Utah and Utah State University.
- (5) "Technology outreach innovation program" or "TOIP" means the program described in Section 63M-2-202.
- (6) "USTAR governing authority" means the Utah Science Technology and Research Governing Authority created in Section 63M-2-301.
- (7)
 - (a) "USTAR initiative" means the Utah Science Technology and Research Initiative created in Section 63M-2-301.
 - (b) "USTAR initiative" includes the projects, operations, activities, programs, and services described in this chapter.

Amended by Chapter 357, 2015 General Session

Part 2

Utah Science Technology and Research Initiative

63M-2-201 Science technology research buildings.

- (1) As funding becomes available from the Legislature or other sources, the USTAR governing authority shall:
 - (a) construct at Utah State University:
 - (i) a Bio Innovations Research Institute;
 - (ii) an Infectious Disease Research Center; and

- (iii) an Informatics/Computing Research Center; and
- (b) construct at the University of Utah:
 - (i) a Neuroscience and Biomedical Technology Research Building; and
 - (ii) an Information Technology and Bioinformatics Research Center.
- (2) The USTAR governing authority shall, subject to any restrictions or directions established by the Legislature, plan, design, and construct the buildings.
- (3)
 - (a) Utah State University shall provide the land for the construction of science technology and research buildings on its campus.
 - (b) The University of Utah shall provide the land for the construction of science technology and research buildings on its campus.
- (4) The USTAR governing authority shall hold title to the research buildings.
- (5) The governing authority shall:
 - (a) before approving occupancy of a building, lease each building constructed on Utah State University's campus to Utah State University and each building constructed on the University of Utah's campus to the University of Utah by entering into a written lease agreement with each university that clearly establishes the terms for the university's use, maintenance, and ongoing rental payments for the building;
 - (b) require research teams to generate a certain amount of revenue from grants or other sources to contribute to the USTAR initiative; and
 - (c) unless prohibited by law, deposit lease payments and other money received from the universities and research teams with the state treasurer for deposit into the sinking funds created under Section 63B-1a-301 for debt service on the bonds issued to fund planning, design, and construction of the research buildings.

Amended by Chapter 186, 2014 General Session

63M-2-202 Technology outreach innovation program.

- (1) As funding becomes available from the Legislature or other sources, the USTAR governing authority shall establish a technology outreach innovation program, also known as the TOIP, at up to five locations distributed strategically throughout Utah.
- (2) The USTAR governing authority shall ensure that the technology innovation outreach program acts as a resource to:
 - (a) broker ideas, new technologies, and services to entrepreneurs and businesses throughout a defined service area;
 - (b) engage local entrepreneurs and professors at applied technology centers, colleges, and universities by connecting them to Utah's research universities;
 - (c) screen business ideas and new technologies to ensure that the ones with the highest growth potential receive the most targeted services and attention;
 - (d) connect market ideas and technologies in new or existing businesses or industries or in regional colleges and universities with the expertise of Utah's research universities;
 - (e) assist businesses, applied technology centers, colleges, and universities in developing commercial applications for their research; and
 - (f) disseminate and share discoveries and technologies emanating from Utah's research universities to local entrepreneurs, businesses, applied technology centers, colleges, and universities.
- (3) In designing and operating the TOIP, for each TOIP location the USTAR governing authority:
 - (a) may hire a TOIP director;

- (b) shall establish written performance standards and expectations; and
- (c) shall require reporting related to those performance standards and expectations on at least an annual basis.
- (4) A TOIP director hired under Subsection (3) shall:
 - (a) be categorized as a schedule AC employee in accordance with Section 67-19-15;
 - (b) report to, and be supervised by, the executive director;
 - (c) ensure the TOIP serves to further the vision and mission of the USTAR initiative; and
 - (d) as directed by the executive director, implement the policies and procedures adopted by the USTAR governing authority.

Amended by Chapter 357, 2015 General Session

63M-2-203 Research teams.

- (1) As funding becomes available from the Legislature or other sources, and subject to any restrictions or directions established by the Legislature, the USTAR governing authority shall allocate money to Utah State University and the University of Utah to provide funding for research teams to conduct science and technology research.
- (2) The USTAR governing authority shall:
 - (a) establish written performance standards and expectations for each research team receiving USTAR initiative funding;
 - (b) require each research team to report on the team's performance related to those standards and expectations on at least an annual basis; and
 - (c) require each research team to report on the amount of funding received from sources other than USTAR initiative funding on at least an annual basis.
- (3) The USTAR governing authority shall discontinue allocating money to a research team that does not provide the reporting required by Subsection (2).
- (4) The USTAR governing authority may discontinue allocating money to a research team for any reason, including:
 - (a) when the research team is failing to meet expectations established through performance standards and expectations; and
 - (b) when the research team is receiving sufficient funding from other sources to no longer reasonably need USTAR initiative funding.

Amended by Chapter 186, 2014 General Session

63M-2-204 Financial participation agreement.

- (1) In consideration of the money and services provided or agreed to be provided, the state of Utah, Utah State University, and the University of Utah agree that they will allocate commercialization revenues as follows:
 - (a) for up to and including the first \$15,000,000 in commercialization revenues generated:
 - (i) 66.6% shall be retained by the research universities, with the money distributed proportionately to the university that generated the commercialization revenue; and
 - (ii) 33.4% shall be paid to the USTAR governing authority for the ongoing operation of the USTAR initiative;
 - (b) for all subsequent money received:
 - (i) 50% to Utah State University and the University of Utah, with the money distributed proportionately based upon which university conducted the research that generated the commercialization revenues; and

- (ii) 50% to the USTAR governing authority or other entity designated by the state to be used for:
 - (A) unless prohibited by law, deposit with the state treasurer for deposit into the sinking fund created under Section 63B-1a-301 for debt service on the bonds issued to fund planning, design, and construction of the research buildings;
 - (B) ongoing operations of the USTAR initiative;
 - (C) replacement of equipment in the research buildings;
 - (D) recruitment and funding of additional research teams; and
 - (E) construction of additional research buildings.

Amended by Chapter 357, 2015 General Session

Part 3

Utah Science Technology and Research Governing Authority

63M-2-301 The Utah Science Technology and Research Initiative and the Utah Science Technology and Research Governing Authority -- Creation -- Membership -- Meetings -- Staff.

- (1) There is created the Utah Science Technology and Research Initiative.
- (2) To oversee the Utah Science Technology and Research Initiative, there is created the Utah Science Technology and Research Governing Authority consisting of the state treasurer or the state treasurer's designee, the executive director of the Governor's Office of Economic Development, and the following eight members appointed as follows:
 - (a) three appointed by the governor, with the consent of the Senate;
 - (b) two appointed by the president of the Senate;
 - (c) two appointed by the speaker of the House of Representatives; and
 - (d) one appointed by the commissioner of higher education.
- (3)
 - (a)
 - (i) The eight appointed members shall serve four-year staggered terms.
 - (ii) The appointed members may not serve more than two full consecutive terms.
 - (iii) An appointed member may be removed from the board for any reason before the member's term is completed at the discretion of the original appointing authority after consultation with the governing authority.
 - (b) Notwithstanding Subsection (3)(a)(i), the terms of the first members of the governing authority shall be staggered by lot so that half of the initial members serve two-year terms and half serve four-year terms.
- (4) Vacancies in the appointed positions on the governing authority shall be filled by the appointing authority in the same manner as the original appointment for the unexpired term.
- (5)
 - (a) The governor, with the consent of the Senate, shall select the chair of the governing authority to serve a one-year term.
 - (b) The governor may extend the term of a sitting chair of the governing authority without the consent of the Senate.
 - (c) The executive director of the Governor's Office of Economic Development shall serve as the vice chair of the governing authority.

- (6) The governing authority shall meet at least six times each year and may meet more frequently at the request of a majority of the members of the governing authority.
- (7) Five members of the governing authority are a quorum.
- (8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (9)
 - (a) After consultation with the USTAR governing authority, the governor, with the consent of the Senate, shall appoint a full-time executive director to provide staff support for the USTAR governing authority.
 - (b) The executive director is an at-will employee who may be terminated without cause by the governor or by majority vote of the USTAR governing authority.

Amended by Chapter 357, 2015 General Session

63M-2-302 USTAR governing authority powers.

- (1) The USTAR governing authority shall:
 - (a) ensure that funds appropriated and received for research and development at the research universities and for the TOIP are used appropriately, effectively, and efficiently in accordance with the intent of the Legislature;
 - (b) in cooperation with the universities' administrations, expand key research at the two research universities;
 - (c) enhance technology transfer and commercialization of research and technologies developed at the research universities to create high-quality jobs and new industries in the private sector in Utah;
 - (d) review state and local economic development plans and appropriations to ensure that the USTAR initiative and its appropriations do not duplicate existing or planned programs;
 - (e) establish written economic development objectives for the USTAR initiative that are measurable and verifiable, including how to maximize revenue to the USTAR initiative so that it becomes financially self-supporting;
 - (f) by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for allocating appropriated money for research teams and for the commercialization of new technology between Utah State University and the University of Utah;
 - (g) verify that the USTAR initiative is being enhanced by research grants and that it is meeting the governing authority's economic development objectives;
 - (h) monitor all research plans that are part of the USTAR initiative at the research universities to determine that appropriations are being spent in accordance with legislative intent and to maximize the benefit and return to the state; and
 - (i) develop methods and incentives to encourage investment in and contributions to the USTAR initiative from the private sector.
- (2) The USTAR governing authority may:
 - (a) in addition to money received from the Legislature, receive contributions for the USTAR initiative from any source in the form of money, property, labor, or other things of value;
 - (b) subject to any restrictions imposed by the donation, appropriations, or bond authorizations, allocate money received by it among the research universities, technology outreach program,

and technology transfer offices to support commercialization and technology transfer to the private sector; or

(c) enter into agreements necessary to obtain private equity investment in the USTAR initiative.

Amended by Chapter 357, 2015 General Session

63M-2-302.5 USTAR governing authority requirements.

The USTAR governing authority is subject to the requirements of an executive branch agency and is:

- (1) an agency for purposes of Title 63J, Chapter 1, Budgetary Procedures Act;
- (2) an executive branch procurement unit for purposes of Title 63G, Chapter 6a, Utah Procurement Code;
- (3) a governmental entity for purposes of Title 63G, Chapter 2, Government Records Access and Management Act; and
- (4) a public body for purposes of Title 52, Chapter 4, Open and Public Meetings Act.

Enacted by Chapter 186, 2014 General Session

63M-2-303 USTAR Governing Authority Advisory Council -- Chair -- Meetings.

- (1) There is created the USTAR Governing Authority Advisory Council consisting of 12 members appointed as follows:
 - (a) one member appointed by the director of the Governor's Office of Economic Development;
 - (b) one member appointed by the Utah Technology Council;
 - (c) one member appointed by the Utah Nanotechnology Initiative;
 - (d) one member appointed by the Economic Development Corporation of Utah;
 - (e) one member appointed by BioUtah;
 - (f) one member appointed by the Salt Lake Area Chamber of Commerce;
 - (g) one member appointed by the Provo-Orem Chamber of Commerce;
 - (h) one member appointed by the Davis Area Chamber of Commerce;
 - (i) one member appointed by the Ogden-Weber Chamber of Commerce;
 - (j) one member appointed by the Cache Chamber of Commerce;
 - (k) one member appointed by the St. George Area Chamber of Commerce; and
 - (l) one member appointed by the Vernal Chamber of Commerce.
- (2) The USTAR governing authority shall consult with the advisory council about the USTAR initiative.
- (3) The advisory council shall select a chair from among its members to serve a two-year term.
- (4) The advisory council shall convene whenever the USTAR governing authority requests a meeting for consultation.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 186, 2014 General Session

Part 4

USTAR Reporting and Audit Requirements

63M-2-401 Reporting requirements.

- (1) By October 1 of each year, the USTAR governing authority shall submit to the governor; the Legislature; the Business, Economic Development, and Labor Appropriations Subcommittee; and the Economic Development and Workforce Services Interim Committee an annual written report of the operations, activities, programs, and services of the governing authority and the USTAR initiative for the preceding fiscal year.
- (2) For each project, operation, activity, program, or service related to the USTAR initiative or overseen or funded through the USTAR governing authority, the annual report shall include:
 - (a) a description of the project, operation, activity, program, or service;
 - (b) data selected and used by the governing authority to measure progress, performance, and scope of the project, operation, activity, program, or service, including summary data;
 - (c) a clear description of the methodology for any data in the report that includes an estimation;
 - (d) the amount and source of all USTAR initiative funding, including:
 - (i) funding from legislative appropriations;
 - (ii) funding procured outside of legislative appropriations, including a separate accounting of grants or investments contributing to research teams and other activities of the USTAR initiative from the federal government, private entities, or other sources, and an explanation of the extent to which:
 - (A) outside funding was contingent on or leveraged by legislative appropriations; and
 - (B) outside funding would continue if legislative appropriations were discontinued;
 - (iii) commercialization revenue, including a separate accounting of:
 - (A) realized commercialization revenue;
 - (B) unrealized commercialization revenue; and
 - (C) commercialization revenue going to other parties attributable to USTAR initiative funding;
 - (iv) lease revenue from each building in which the USTAR governing authority holds title; and
 - (v) the amount of money deposited with the state treasurer for deposit into the sinking fund created under Section 63B-1a-301 for debt service on the bonds issued to fund planning, design, and construction of the research buildings;
 - (e) all expenses of the USTAR initiative, including:
 - (i) operational expenses;
 - (ii) for each employee receiving compensation from USTAR initiative funding, compensation information, including:
 - (A) salary expenses, benefit expenses, and travel expenses;
 - (B) information for each research team employee and each employee of the TOIP that receives compensation directly or indirectly through USTAR initiative funding; and
 - (C) information regarding compensation for each employee from sources other than USTAR initiative funding, including grants and compensation from a university or private entity;
 - (iii) for each research team, salary expenses, benefit expenses, travel expenses, and operations and maintenance expenses;
 - (iv) operational and maintenance expenses for each building in which the USTAR governing authority holds title;
 - (v) operational and maintenance expenses paid for by USTAR initiative funding for each location that has an established TOIP; and

- (vi) each grant or other incentive given as a result of the USTAR initiative, including grants or incentives awarded through the TOIP;
 - (f) the number of jobs and the corresponding salary ranges created by the USTAR initiative, including the number of jobs where the employee is expected to be employed for at least one year and earns at least 125% of the prevailing wage of the county where the employee works;
 - (g) the name of each business entity receiving a grant or other incentive as a result of the USTAR initiative, including the outreach program;
 - (h) a list of business entities that have hired employees as a result of the USTAR initiative;
 - (i) the tax revenue generated as a result of the USTAR initiative, with actual revenue generated clearly separated from potential revenue;
 - (j) a list of intellectual property assets, including patents, generated by research teams as a result of the USTAR initiative, including a reasonable estimate of the USTAR initiative's percentage share of potential commercialization revenue that may be realized from those assets;
 - (k) a description of any agreements entered into regarding private equity investment in the USTAR initiative;
 - (l) beginning with data from the fiscal year beginning July 1, 2013, historical data from previous years for comparison with the annual data reported under this Subsection (2);
 - (m) goals, challenges, and achievements related to the project, operation, activity, program, or service;
 - (n) relevant federal and state statutory references and requirements;
 - (o) contact information of officials knowledgeable and responsible for each project, operation, activity, program, or service;
 - (p) other information determined by the USTAR governing authority that:
 - (i) may be needed, useful, or of historical significance; or
 - (ii) promotes accountability and transparency for each project, operation, activity, program, or service with the public and with elected officials;
 - (q) the written economic development objectives required under Subsection 63M-2-302(1)(e) and a description of any progress or challenges in meeting the objectives; and
 - (r) the audit report described in Section 63M-2-402.
- (3) The annual report shall be designed to provide clear, accurate, and accessible information to the public, the governor, and the Legislature.
- (4) The governing authority shall:
- (a) submit the annual report in accordance with Section 68-3-14; and
 - (b) make the annual report and previous annual reports accessible to the public by placing a link to the reports on the USTAR initiative's website.
- (5) In addition to the annual written report described in this section:
- (a) upon the request of a committee, the USTAR governing authority shall provide information and progress reports to the Economic Development and Workforce Services Interim Committee; the Business and Labor Interim Committee; and the Business, Economic Development, and Labor Appropriations Subcommittee; and
 - (b) on or before October 1, 2019, and every five years after October 1, 2019, the USTAR governing authority shall include with the annual report described in this section a written analysis and recommendations concerning the usefulness of the information required in the annual report and the ongoing effectiveness of the USTAR initiative, including whether:
 - (i) the reporting requirements are effective at measuring the performance of the USTAR initiative;
 - (ii) the reporting requirements should be modified; and
 - (iii) the USTAR initiative is beneficial to the state and should continue.

Amended by Chapter 357, 2015 General Session

63M-2-402 Audit requirements.

- (1) Each fiscal year, an audit of the activities of the USTAR initiative shall be made as described in this section.
- (2)
 - (a) As approved by the Legislative Audit Subcommittee, the audit shall be conducted by:
 - (i) the legislative auditor; or
 - (ii) an independent auditor engaged by the legislative auditor.
 - (b) An independent auditor used under Subsection (2)(a)(ii) may not have a direct financial conflict of interest with the USTAR initiative or the USTAR governing authority.
- (3) The USTAR governing authority shall pay the costs associated with the annual audit.
- (4) The annual audit shall:
 - (a) include a verification of the accuracy of the information required to be included in the annual report described in Section 63M-2-401; and
 - (b) be completed by September 1 of each year.

Amended by Chapter 357, 2015 General Session

Chapter 3 Tar Sands Pilot Plant Act

Part 1 General Provisions

63M-3-101 Title.

This chapter is known as the "Tar Sands Pilot Plant Act."

Enacted by Chapter 382, 2008 General Session

63M-3-102 Legislative findings -- Purpose of act.

- (1) The Legislature finds that:
 - (a) Substantial deposits of tar sands exist within lands located in various places within the state of Utah, but this is primarily a Utah phenomenon, there being no similar significant deposits within lands located elsewhere in the United States.
 - (b) While large known deposits of tar sands exist outside the United States, primarily in South America and Canada, only those in Canada produce commercial quantities of hydrocarbons, this having come about only after years of research and experimentation and substantial private and public investment.
 - (c) Significant laboratory research has been conducted, including research by the University of Utah, which demonstrates a potential for commercial production of the tar sands deposits located in the state of Utah, which potential remains to be established by the scale-up of laboratory research to a pilot plant development stage.

- (d) Successful demonstration of a hydrocarbon recovery process from Utah tar sands as commercially viable at the pilot plant level of production could form the basis for the development by private industry of commercial production of a substantial volume of hydrocarbon energy fuel, thereby commensurately reducing the amount of petroleum products which are required to be imported at exorbitant cost from foreign sources to meet the needs of the citizens of this state and the United States.
- (2) The purpose of this act is to stimulate and encourage the development and commercial production by private industry of hydrocarbons from the tar sands deposits lying within the state of Utah for the public good and economic well-being of the citizens of this state and the United States, and to so do by providing for the design, construction, and operation of a pilot plant to be employed for the purpose of demonstrating the commercial viability of processes for the recovery of hydrocarbons from the tar sands deposits of the state through certain funding by the state in conjunction with funding furnished from other sources, both public and private.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-3-103 Definitions.

As used in this act:

- (1) "Contractor" means the parties from private industry who design, construct, or operate the pilot plant.
- (2) "Council" means the state advisory council on science and technology.
- (3) "Intellectual property" means the sum of knowledge contained in patents, know-how, copyrights, trade secrets, and technical information relating to the pilot plant and the research which has preceded it.
- (4) "Objective period" means that period of time required for the pilot plant to achieve its design objectives.
- (5) "Pilot plant" means the tar sands pilot plant which is the subject of this act.
- (6) "Station" means the Utah engineering experiment station, University of Utah.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2

Contracts and Intellectual Property

63M-3-201 Contract for pilot plant -- Contents -- Financing -- Termination of contract.

- (1) The council is authorized to enter into contracts with contractors to provide for the design, construction, and operation of a pilot plant to fulfill the purposes of this act.
- (2) The contracts provided for in Subsection (1) shall provide, among other things, for the following:
 - (a) The plans and specifications for and the processes to be used in the pilot plant must be approved by the council.
 - (b) The station is to be the project engineer in respect to the pilot plant and is to represent the council in respect to it. As the project engineer the station has the responsibility of monitoring performance by the contractors, gathering data pertinent to the purpose for which the pilot plant is to be constructed and operated, and performing such administrative, accounting, and other duties assigned to it in respect to the pilot plant by the council. As compensation for its services the station is to receive its costs, direct and indirect, calculated in accordance

with standard accounting procedures followed by the University of Utah in contracts with the United States government and its agencies; and the amount to be so paid to the station is to be considered part of the costs of design, construction, and operation of the pilot plant.

- (c) The contractor shall provide all funds necessary to the design, construction, and operation of the pilot plant for the objective period which are not provided by the appropriation made to the council for purposes of this act under Section 5. To provide its portion of these funds the contractor may use both private and public sources, but that from public sources can only be used with prior approval by the council.
- (d) The site for the pilot plant is subject to prior approval by the council.
- (e) The pilot plant and any production from it shall be owned by the state of Utah in the proportion that its appropriation for purposes of this act under Section 5 bears to the total cost of designing, constructing, and operating the pilot plant for the objective period. This total cost does not include the cost or value of the site for the pilot plant or tar sand feedstock for the objective period.
- (f) The council shall have the exclusive right to determine when the end of the objective period has been reached, at which time any contracts between the council and the contractor regarding the pilot plant shall terminate. The pilot plant is then to be sold for cash pursuant to law at competitive bidding when the sale of the pilot plant equipment is determined to be practicable by the council. The gross proceeds from the sale shall be paid to the state but not in excess of the amount of the appropriation made under Section 5 plus an interest factor of 10% per year from the date of the contracts to the sale date.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-3-202 Intellectual properties discovered or developed -- Ownership -- Patenting -- Licensing.

- (1) To the extent not inconsistent with the patent laws of the United States, the intellectual properties which are newly discovered or newly developed in the course of the design, construction, and operation of the pilot plant during the objective period:
 - (a) shall be owned by the state of Utah to the same extent as the pilot plant and production from it as provided for in Subsection 63M-3-201(2)(e); and
 - (b) shall, if patentable, be patented in a manner appropriate to this ownership by the state and the other owners.
- (2) Any intellectual properties described in Subsection (1) insofar as they are so owned by the state may be licensed for the objective period upon such terms as are approved by the council.

Renumbered and Amended by Chapter 382, 2008 General Session

**Chapter 4
Utah Energy Act**

**Part 1
General Provisions**

63M-4-101 Title.

This chapter is known as the "Utah Energy Act."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-4-102 Definitions.

As used in this chapter:

- (1) "Energy advisor" means the governor's energy advisor appointed under Section 63M-4-401.
- (2) "Office" means the Office of Energy Development created in Section 63M-4-401.
- (3) "State agency" means an executive branch:
 - (a) department;
 - (b) agency;
 - (c) board;
 - (d) commission;
 - (e) division; or
 - (f) state educational institution.

Amended by Chapter 37, 2012 General Session

Part 2

Governor's Energy Advisor

63M-4-201 Governor's energy advisor -- Duties.

- (1)
 - (a) The governor shall appoint an energy advisor.
 - (b) The governor's energy advisor serves at the pleasure of the governor.
- (2) The governor's energy advisor shall:
 - (a) advise the governor on energy-related matters;
 - (b) annually review and propose updates to the state's energy policy, as contained in Section 63M-4-301;
 - (c) promote as the governor's energy advisor considers necessary:
 - (i) the development of cost-effective energy resources both renewable and nonrenewable; and
 - (ii) educational programs, including programs supporting conservation and energy efficiency measures;
 - (d) coordinate across state agencies to assure consistency with state energy policy, including:
 - (i) working with the State Energy Program to promote access to federal assistance for energy-related projects for state agencies and members of the public;
 - (ii) working with the Division of Emergency Management to assist the governor in carrying out the governor's energy emergency powers under Title 53, Chapter 2a, Part 10, Energy Emergency Powers of the Governor Act;
 - (iii) participating in the annual review of the energy emergency plan and the maintenance of the energy emergency plan and a current list of contact persons required by Section 53-2a-902; and
 - (iv) identifying and proposing measures necessary to facilitate low-income consumers' access to energy services;
 - (e) coordinate with the Division of Emergency Management ongoing activities designed to test an energy emergency plan to ensure coordination and information sharing among state agencies

and political subdivisions in the state, public utilities and other energy suppliers, and other relevant public sector persons as required by Sections 53-2a-902, 53-2a-1004, 53-2a-1008, and 53-2a-1010;

- (f) coordinate with requisite state agencies to study:
 - (i) the creation of a centralized state repository for energy-related information;
 - (ii) methods for streamlining state review and approval processes for energy-related projects; and
 - (iii) the development of multistate energy transmission and transportation infrastructure;
 - (g) coordinate energy-related regulatory processes within the state;
 - (h) compile, and make available to the public, information about federal, state, and local approval requirements for energy-related projects;
 - (i) act as the state's advocate before federal and local authorities for energy-related infrastructure projects or coordinate with the appropriate state agency; and
 - (j) help promote the Division of Facilities Construction and Management's measures to improve energy efficiency in state buildings.
- (3) The governor's energy advisor has standing to testify on behalf of the governor at the Public Service Commission created in Section 54-1-1.

Amended by Chapter 295, 2013 General Session

63M-4-202 Agency cooperation.

A state agency shall provide the state energy officer with any energy-related information requested by the governor's energy advisor if the governor's energy advisor's request is consistent with other law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-4-203 Reports.

- (1) The governor's energy advisor shall report annually to:
 - (a) the governor; and
 - (b) the Natural Resources, Agriculture, and Environment Interim Committee.
- (2) The report required in Subsection (1) shall:
 - (a) summarize the status and development of the state's energy resources;
 - (b) summarize the activities and accomplishments of the Office of Energy Development;
 - (c) address the governor's energy advisor's activities under this part; and
 - (d) recommend any energy-related executive or legislative action the governor's energy advisor considers beneficial to the state, including updates to the state energy policy under Section 63M-4-301.

Amended by Chapter 378, 2015 General Session

Part 3 State Energy Policy

63M-4-301 State energy policy.

- (1) It is the policy of the state that:

- (a) Utah shall have adequate, reliable, affordable, sustainable, and clean energy resources;
- (b) Utah will promote the development of:
 - (i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and oil sands; and
 - (ii) renewable energy resources, including geothermal, solar, wind, biomass, biofuel, and hydroelectric;
 - (iii) nuclear power generation technologies certified for use by the United States Nuclear Regulatory Commission;
 - (iv) alternative transportation fuels and technologies; and
 - (v) infrastructure to facilitate energy development and diversified modes of transportation;
- (c) Utah will promote the development of resources and infrastructure sufficient to meet the state's growing demand, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources;
- (d) Utah will allow market forces to drive prudent use of energy resources, although incentives and other methods may be used to ensure the state's optimal development and use of energy resources in the short- and long-term;
- (e) Utah will pursue energy conservation, energy efficiency, and environmental quality;
- (f)
 - (i) state regulatory processes should be streamlined to balance economic costs with the level of review necessary to ensure protection of the state's various interests; and
 - (ii) where federal action is required, Utah will encourage expedited federal action and will collaborate with federal agencies to expedite review;
- (g) Utah will maintain an environment that provides for stable consumer prices that are as low as possible while providing producers and suppliers a fair return on investment, recognizing that:
 - (i) economic prosperity is linked to the availability, reliability, and affordability of consumer energy supplies; and
 - (ii) investment will occur only when adequate financial returns can be realized; and
- (h) Utah will promote training and education programs focused on developing a comprehensive understanding of energy, including programs addressing:
 - (i) energy conservation;
 - (ii) energy efficiency;
 - (iii) supply and demand; and
 - (iv) energy related workforce development.
- (2) State agencies are encouraged to conduct agency activities consistent with Subsection (1).
- (3) A person may not file suit to challenge a state agency's action that is inconsistent with Subsection (1).

Amended by Chapter 378, 2015 General Session

63M-4-302 Legislative committee review.

The Natural Resources, Agriculture, and Environment Interim Committee and the Public Utilities and Technology Interim Committee shall review the state energy policy annually and propose any changes to the Legislature.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 4

Office of Energy Development

63M-4-401 Creation of Office of Energy Development -- Director -- Purpose -- Rulemaking regarding confidential information.

- (1) There is created an Office of Energy Development.
- (2)
 - (a) The governor's energy advisor shall serve as the director of the office or appoint a director of the office.
 - (b) The director:
 - (i) shall, if the governor's energy advisor appoints a director under Subsection (2)(a), report to the governor's energy advisor; and
 - (ii) may appoint staff as funding within existing budgets allows.
 - (c) The office may consolidate energy staff and functions existing in the state energy program.
- (3) The purposes of the office are to:
 - (a) serve as the primary resource for advancing energy and mineral development in the state;
 - (b) implement:
 - (i) the state energy policy under Section 63M-4-301; and
 - (ii) the governor's energy and mineral development goals and objectives;
 - (c) advance energy education, outreach, and research, including the creation of elementary, higher education, and technical college energy education programs;
 - (d) promote energy and mineral development workforce initiatives; and
 - (e) support collaborative research initiatives targeted at Utah-specific energy and mineral development.
- (4) By following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act, the office may:
 - (a) seek federal grants or loans;
 - (b) seek to participate in federal programs; and
 - (c) in accordance with applicable federal program guidelines, administer federally funded state energy programs.
- (5) The office shall perform the duties required by Sections 59-7-614.7, 59-10-1029, Part 5, Alternative Energy Development Tax Credit Act, and Part 6, High Cost Infrastructure Development Tax Credit Act.
- (6)
 - (a) For purposes of administering this section, the office may make rules, by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to maintain as confidential, and not as a public record, information that the office receives from any source.
 - (b) The office shall maintain information the office receives from any source at the level of confidentiality assigned by the source.

Amended by Chapter 356, 2015 General Session
Amended by Chapter 378, 2015 General Session

63M-4-402 In-state generator need -- Merchant electric transmission line.

- (1) As used in this section:
 - (a) "Capacity allocation process" means the process outlined by the Federal Energy Regulatory Commission in its final policy statement dated January 17, 2013, "Allocation of Capacity on

New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects, Priority Rights to New Participant-Funded Transmission," 142 F.E.R.C. P61,038 (2013).

- (b) "Certificate of in-state need" means a certificate issued by the office in accordance with this section identifying an in-state generator that meets the requirements and qualifications of this section.
 - (c) "Expression of need" means a document prepared and submitted to the office by an in-state merchant generator that describes or otherwise documents the transmission needs of the in-state merchant generator in conformance with the requirements of this section.
 - (d) "In-state merchant generator" means an electric power provider that generates power in Utah and does not provide service to retail customers within the boundaries of Utah.
 - (e) "Merchant electric transmission line" means a transmission line that does not provide electricity to retail customers within the boundaries of Utah.
 - (f) "Office" means the Office of Energy Development established in Section 63M-4-401.
 - (g) "Open solicitation notice" means a document prepared and submitted to the office by a merchant electric transmission line regarding the commencement of the line's open solicitation in compliance with 142 F.E.R.C. P61,038 (2013).
- (2) As part of the capacity allocation process, a merchant electric transmission line shall file an open solicitation notice with the office containing a description of the merchant electric transmission line, including:
- (a) the proposed capacity;
 - (b) the location of potential interconnection for in-state merchant generators;
 - (c) the planned date for commencement of construction; and
 - (d) the planned commercial operations date.
- (3) Upon receipt of the open solicitation notice, the office shall:
- (a) publish the notice on the Utah Public Notice Website created under Section 63F-1-701;
 - (b) include in the notice contact information; and
 - (c) provide the deadline date for submission of an expression of need.
- (4)
- (a) In response to the open solicitation notice published by the office, and no later than 30 days after publication of the notice, an in-state merchant generator may submit an expression of need to the office.
 - (b) An expression of need submitted under Subsection (4)(a) shall include:
 - (i) a description of the in-state merchant generator; and
 - (ii) a schedule of transmission capacity requirement provided in megawatts, by point of receipt and point of delivery and by operating year.
- (5) No later than 60 days after notice is published under Subsection (3), the office shall prepare a certificate of in-state need identifying the in-state merchant generators.
- (6) Within five days of preparing the certificate of in-state need, the office shall:
- (a) publish the certificate on the Utah Public Notice Website created under Section 63F-1-701; and
 - (b) provide the certificate to the merchant electric transmission line for consideration in the capacity allocation process.
- (7) The merchant electric transmission line shall:
- (a) provide the Federal Energy Regulatory Commission with a copy of the certificate of in-state need; and
 - (b) certify that the certificate is being provided to the Federal Energy Regulatory Commission in accordance with the requirements of this section, including a citation to this section.

- (8) At the conclusion of the capacity allocation process, and unless prohibited by a contractual obligation of confidentiality, the merchant electric transmission line shall report to the office whether a merchant in-state generator reflected on the certificate of in-state need has entered into a transmission service agreement with the merchant electric transmission line.
- (9) This section may not be interpreted to:
 - (a) create an obligation of a merchant electric transmission line to pay for, or construct any portion of, the transmission line on behalf of an in-state merchant generator; or
 - (b) preempt, supersede, or otherwise conflict with Federal Energy Regulatory Commission rules and regulations applicable to a commercial transmission agreement, including agreements, or terms of agreements, as to cost, terms, transmission capacity, or key rates.
- (10) Subsections (2) through (9) do not apply to a project entity as defined in Section 11-13-103.

Enacted by Chapter 294, 2014 General Session

Part 5

Alternative Energy Development Tax Credit Act

63M-4-501 Title.

This part is known as the "Alternative Energy Development Tax Credit Act."

Enacted by Chapter 410, 2012 General Session

63M-4-502 Definitions.

As used in this part:

- (1) "Alternative energy" is as defined in Section 59-12-102.
- (2)
 - (a) "Alternative energy entity" means a person that:
 - (i) conducts business within the state; and
 - (ii) enters into an agreement with the office that qualifies the person to receive a tax credit.
 - (b) "Alternative energy entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (2)(a).
- (3) "Alternative energy project" means a project produced by an alternative energy entity if that project involves:
 - (a) a new or expanding operation in the state; and
 - (b)
 - (i) utility-scale alternative energy generation; or
 - (ii) the extraction of alternative fuels.
- (4) "New incremental job within the state" means, with respect to an alternative energy entity, an employment position that:
 - (a) did not exist within the state before:
 - (i) the alternative energy entity entered into an agreement with the office in accordance with Section 63M-4-503; and
 - (ii) the alternative energy project began;
 - (b) is not shifted from one location in the state to another location in the state; and
 - (c) is established to the satisfaction of the office, including by amounts paid or withheld by the alternative energy entity under Title 59, Chapter 10, Individual Income Tax Act.

- (5) "New state revenues" means an increased amount of tax revenues generated as a result of an alternative energy project by an alternative energy entity or a new incremental job within the state under the following:
 - (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
 - (b) Title 59, Chapter 10, Individual Income Tax Act; and
 - (c) Title 59, Chapter 12, Sales and Use Tax Act.
- (6) "Office" is as defined in Section 63M-4-401.
- (7) "Tax credit" means a tax credit under Section 59-7-614.7 or 59-10-1029.
- (8) "Tax credit applicant" means an alternative energy entity that applies to the office to receive a tax credit certificate under this part.
- (9) "Tax credit certificate" means a certificate issued by the office that:
 - (a) lists the name of the tax credit certificate recipient;
 - (b) lists the tax credit certificate recipient's taxpayer identification number;
 - (c) lists the amount of the tax credit certificate recipient's tax credits authorized under this part for a taxable year; and
 - (d) includes other information as determined by the office.
- (10) "Tax credit certificate recipient" means an alternative energy entity that receives a tax credit certificate for a tax credit in accordance with this part.

Enacted by Chapter 410, 2012 General Session

63M-4-503 Tax credits.

- (1)
 - (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules establishing standards an alternative energy entity shall meet to qualify for a tax credit.
 - (b) Before the office enters into an agreement described in Subsection (2) with an alternative energy entity, the office, in consultation with other state agencies as necessary, shall certify:
 - (i) that the alternative energy entity plans to produce in the state at least:
 - (A) two megawatts of electricity;
 - (B) 1,000 barrels per day if the alternative energy project is a crude oil equivalent production;
or
 - (C) 250 barrels per day if the alternative energy project is a biomass energy fuel production;
 - (ii) that the alternative energy project will generate new state revenues;
 - (iii) the economic life of the alternative energy project produced by the alternative energy entity;
 - (iv) that the alternative energy entity meets the requirements of Section 63M-4-504; and
 - (v) that the alternative energy entity has received a Certificate of Good Standing from the Division of Corporations and Commercial Code.
- (2) If an alternative energy entity meets the requirements of this part to receive a tax credit, the office shall enter into an agreement with the alternative energy entity to authorize the tax credit in accordance with Subsection (3).
- (3)
 - (a) Subject to Subsection (3)(b), if the office expects that the time from the commencement of construction until the end of the economic life of the alternative energy project is 20 years or more:
 - (i) the office shall grant a tax credit for the lesser of:
 - (A) the economic life of the alternative energy project; or
 - (B) 20 years; and

- (ii) the tax credit is equal to 75% of new state revenues generated by the alternative energy project.
- (b) For a taxable year, a tax credit under this section may not exceed the new state revenues generated by an alternative energy project during that taxable year.
- (4) An alternative energy entity that seeks to receive a tax credit or has entered into an agreement described in Subsection (2) with the office shall:
 - (a) annually file a report with the office showing the new state revenues generated by the alternative energy project during the taxable year for which the alternative energy entity seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029;
 - (b) subject to Subsection (5), annually file a report with the office prepared by an independent certified public accountant verifying the new state revenue described in Subsection (4)(a);
 - (c) subject to Subsection (5), file a report with the office at least every four years prepared by an independent auditor auditing the new state revenue described in Subsection (4)(a);
 - (d) provide the office with information required by the office to certify the economic life of the alternative energy project produced by the alternative energy entity, which may include a power purchase agreement, a lease, or a permit; and
 - (e) retain records supporting a claim for a tax credit for at least four years after the alternative energy entity claims a tax credit under Section 59-7-614.7 or 59-10-1029.
- (5) An alternative energy entity for which a report is prepared under Subsection (4)(b) or (c) shall pay the costs of preparing the report.
- (6) The office shall annually certify the new state revenues generated by an alternative energy project for a taxable year for which an alternative energy entity seeks to receive a tax credit under Section 59-7-614.7 or 59-10-1029.

Amended by Chapter 414, 2014 General Session

63M-4-504 Qualifications for tax credit -- Procedure.

- (1) The office shall certify an alternative energy entity's eligibility for a tax credit as provided in this section.
- (2) A tax credit applicant shall provide the office with:
 - (a) an application for a tax credit certificate;
 - (b) documentation that the tax credit applicant meets the standards and requirements described in Section 63M-4-503 to the satisfaction of the office for the taxable year for which the tax credit applicant seeks to claim a tax credit; and
 - (c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the tax credit applicant's returns and other information concerning the tax credit applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.
- (3)
 - (a) The office shall submit the documentation described in Subsection (2)(c) to the State Tax Commission.
 - (b) Upon receipt of the documentation described in Subsection (2)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (2)(c) requested by the office that the tax credit applicant directed and authorized the State Tax Commission to provide to the office.
- (4) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is not substantially accurate, the office shall:

- (a) deny the tax credit; or
 - (b) inform the tax credit applicant that the documentation supporting the tax credit applicant's claim for a tax credit was inadequate and ask the tax credit applicant to submit new documentation.
- (5) If, after the office reviews the documentation described in Subsections (2) and (3), the office determines that the documentation supporting the tax credit applicant's claim for a tax credit is substantially accurate, the office shall, on the basis of that documentation:
- (a) enter into the agreement described in Section 63M-4-503;
 - (b) issue a tax credit certificate to the tax credit applicant; and
 - (c) provide a duplicate copy of the tax credit certificate described in Subsection (5)(b) to the State Tax Commission.
- (6) An alternative energy entity may not claim a tax credit under this part unless the alternative energy entity is a tax credit certificate recipient.
- (7) A tax credit certificate recipient that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 63M-4-503(4).

Enacted by Chapter 410, 2012 General Session

63M-4-505 Report to the Legislature.

The office shall report annually to the Public Utilities and Technology Interim Committee and the Revenue and Taxation Interim Committee describing:

- (1) its success in attracting alternative energy projects to the state and the resulting increase in new state revenues under this part;
- (2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
- (3) the economic impact on the state by comparing new state revenues to tax credits that have been or will be granted under this part.

Enacted by Chapter 410, 2012 General Session

Part 6

High Cost Infrastructure Development Tax Credit Act

63M-4-601 Title.

This part is known as the "High Cost Infrastructure Development Tax Credit Act."

Enacted by Chapter 356, 2015 General Session

63M-4-602 Definitions.

As used in this part:

- (1) "Applicant" means a person that conducts business in the state and that applies for a tax credit under this part.
- (2) "Fuel standard compliance project" means a project designed to retrofit a fuel refinery in order to make the refinery capable of producing fuel that complies with the United States Environmental Protection Agency's Tier 3 gasoline sulfur standard described in 40 C.F.R. Sec. 79.54.

(3) "High cost infrastructure project" means:

- (a)
 - (i) a project that expands or creates new industrial, mining, manufacturing, or agriculture activity in the state, not including a retail business; or
 - (ii) new investment of at least \$50,000,000 in an existing industrial, mining, manufacturing, or agriculture entity, by the entity;
- (b) that requires or is directly facilitated by infrastructure construction; and
- (c) for which the cost of infrastructure construction to the entity creating the project is greater than:
 - (i) 10% of the total cost of the project; or
 - (ii) \$10,000,000.

(4) "Infrastructure" means:

- (a) an energy delivery project as defined in Section 63H-2-102;
- (b) a railroad as defined in Section 54-2-1;
- (c) a fuel standard compliance project;
- (d) a road improvement project;
- (e) a water self-supply project;
- (f) a water removal system project; or
- (g) a project that is designed to:
 - (i) increase the capacity for water delivery to a water user in the state; or
 - (ii) increase the capability of an existing water delivery system or related facility to deliver water to a water user in the state.

(5)

- (a) "Infrastructure cost-burdened entity" means an applicant that enters into an agreement with the office that qualifies the applicant to receive a tax credit as provided in this part.
- (b) "Infrastructure cost-burdened entity" includes a pass-through entity taxpayer, as defined in Section 59-10-1402, of a person described in Subsection (5)(a).

(6) "Infrastructure-related revenue" means an amount of tax revenue, for an entity creating a high cost infrastructure project, in a taxable year, that is directly attributable to a high cost infrastructure project, under:

- (a) Title 59, Chapter 7, Corporate Franchise and Income Taxes;
- (b) Title 59, Chapter 10, Individual Income Tax Act; and
- (c) Title 59, Chapter 12, Sales and Use Tax Act.

(7) "Office" means the Office of Energy Development created in Section 63M-4-401.

(8) "Tax credit" means a tax credit under Section 59-7-619 or 59-10-1034.

(9) "Tax credit certificate" means a certificate issued by the office to an infrastructure cost-burdened entity that:

- (a) lists the name of the infrastructure cost-burdened entity;
- (b) lists the infrastructure cost-burdened entity's taxpayer identification number;
- (c) lists, for a taxable year, the amount of the tax credit authorized for the infrastructure cost-burdened entity under this part; and
- (d) includes other information as determined by the office.

Enacted by Chapter 356, 2015 General Session

63M-4-603 Tax credit -- Amount -- Eligibility -- Reporting.

- (1) Before the office enters into an agreement described in Subsection (3) with an applicant regarding a project, the office, in consultation with the Utah Energy Infrastructure Authority

- Board created in Section 63H-2-202, and other state agencies as necessary, shall, in accordance with the procedures described in Section 63M-4-604, certify:
- (a) that the project meets the definition of a high cost infrastructure project under this part;
 - (b) that the high cost infrastructure project will generate infrastructure-related revenue;
 - (c) the economic life of the high cost infrastructure project; and
 - (d) that the applicant has received a certificate of good standing from the Division of Corporations and Commercial Code.
- (2)
- (a) Before the office enters into an agreement described in Subsection (3) with an applicant regarding a project, the Utah Energy Infrastructure Authority Board shall evaluate the project's benefit to the state, based on whether the project:
 - (i) is likely to increase the property tax revenue for the municipality or county where the project will be located;
 - (ii) would provide new infrastructure for an area where the type of infrastructure the project would create is underdeveloped;
 - (iii) would have a positive environmental impact on the state;
 - (iv) would upgrade or improve an existing entity in order to ensure the entity's continued operation and economic viability; and
 - (v) is less likely to be completed without a tax credit issued to the applicant under this part.
 - (b) The Utah Energy Infrastructure Authority Board may recommend that the office deny an applicant a tax credit if the applicant's project does not, as determined by the Utah Energy Infrastructure Authority Board, sufficiently benefit the state based on the criteria described in Subsection (2)(a).
- (3) Subject to the procedures described in Section 63M-4-604, if an applicant meets the requirements of Subsection (1) to receive a tax credit, and the applicant's project receives a favorable recommendation from the Utah Energy Infrastructure Authority Board under Subsection (2), the office shall enter into an agreement with the applicant to authorize the tax credit in accordance with this part.
- (4) The office shall grant a tax credit to an infrastructure cost-burdened entity, for a high cost infrastructure project, under an agreement described in Subsection (3):
- (a) for the lesser of:
 - (i) the economic life of the high cost infrastructure project;
 - (ii) 20 years; or
 - (iii) a time period, the first taxable year of which is the taxable year when the construction of the high cost infrastructure project begins and the last taxable year of which is the taxable year in which the infrastructure cost-burdened entity has recovered, through the tax credit, an amount equal to:
 - (A) 50% of the cost of the infrastructure construction associated with the high cost infrastructure project; or
 - (B) if the high cost infrastructure project is a fuel standard compliance project, 30% of the cost of the infrastructure construction associated with the high cost infrastructure project.
 - (b) except as provided in Subsections (4)(a) and (d), in a total amount equal to 30% of the high cost infrastructure project's total infrastructure-related revenue over the time period described in Subsection (4)(a);
 - (c) for a taxable year, in an amount that does not exceed the high cost infrastructure project's infrastructure-related revenue during that taxable year; and
 - (d) if the high cost infrastructure project is a fuel standard compliance project, in a total amount that is:

- (i) determined by the Utah Energy Infrastructure Authority Board, based on:
 - (A) the applicant's likelihood of completing the high cost infrastructure project without a tax credit; and
 - (B) how soon the applicant plans to complete the high cost infrastructure project; and
 - (ii) equal to or less than 30% of the high cost infrastructure project's total infrastructure-related revenue over the time period described in Subsection (4)(a).
- (5) An infrastructure cost-burdened entity shall, for each taxable year:
- (a) file a report with the office showing the high cost infrastructure project's infrastructure-related revenue during the taxable year;
 - (b) subject to Subsection (7), file a report with the office that is prepared by an independent certified public accountant that verifies the infrastructure-related revenue described in Subsection (5)(a); and
 - (c) provide the office with information required by the office to certify the economic life of the high cost infrastructure project.
- (6) An infrastructure cost-burdened entity shall retain records supporting a claim for a tax credit for the same period of time during which a person is required to keep books and records under Section 59-1-1406.
- (7) An infrastructure cost-burdened entity for which a report is prepared under Subsection (5)(b) shall pay the costs of preparing the report.
- (8) The office shall certify, for each taxable year, the infrastructure-related revenue generated by an infrastructure cost-burdened entity.

Enacted by Chapter 356, 2015 General Session

63M-4-604 Tax credit -- Application procedure.

- (1) An applicant shall provide the office with:
- (a) an application for a tax credit certificate;
 - (b) documentation that the applicant meets the requirements described in Subsection 63M-4-603(1), to the satisfaction of the office, for the taxable year for which the applicant seeks to claim a tax credit; and
 - (c) documentation that expressly directs and authorizes the State Tax Commission to disclose to the office the applicant's returns and other information concerning the applicant that would otherwise be subject to confidentiality under Section 59-1-403 or Section 6103, Internal Revenue Code.
- (2)
- (a) The office shall, for an applicant, submit the documentation described in Subsection (1)(c) to the State Tax Commission.
 - (b) Upon receipt of the documentation described in Subsection (1)(c), the State Tax Commission shall provide the office with the documentation described in Subsection (1)(c).
- (3) If, after the office reviews the documentation from the State Tax Commission under Subsection (2)(b) and the information the applicant submits to the office under Section 63M-4-603, the office, in consultation with the Utah Energy Infrastructure Authority Board created in Section 63H-2-202, determines that the applicant is not eligible for the tax credit under Section 63M-4-603, or that the applicant's documentation is inadequate, the office shall:
- (a) deny the tax credit; or
 - (b) inform the applicant that the documentation supporting the applicant's claim for a tax credit was inadequate and request that the applicant supplement the applicant's documentation.

- (4) Except as provided in Subsection (5), if, after the office reviews the documentation described in Subsection (2)(b) and the information described in Subsection 63M-4-603(6), the office, in consultation with the Utah Energy Infrastructure Authority Board created in Section 63H-2-202, determines that the documentation supporting an applicant's claim for a tax credit adequately demonstrates that the applicant is eligible for the tax credit under Section 63M-4-603, the office shall, on the basis of the documentation:
 - (a) enter, with the applicant, into the agreement described in Subsection 63M-4-603(3);
 - (b) issue a tax credit certificate to the applicant; and
 - (c) provide a duplicate copy of the tax credit certificate described in Subsection (4)(b) to the State Tax Commission.
- (5) The office may deny an applicant a tax credit based on the recommendation of the Utah Energy Infrastructure Authority Board, as provided in Subsection 63M-4-603(2).
- (6) An infrastructure cost-burdened entity may not claim a tax credit under Section 59-7-619 or 59-10-1034 unless the infrastructure cost-burdened entity receives a tax credit certificate from the office.
- (7) An infrastructure cost-burdened entity that claims a tax credit shall retain the tax credit certificate in accordance with Subsection 63M-4-603(7).
- (8) Except for the information that is necessary for the office to disclose in order to make the report described in Section 63M-4-605, the office shall treat a document an applicant or infrastructure cost-burdened entity provides to the office as a protected record under Section 63G-2-305.

Enacted by Chapter 356, 2015 General Session

63M-4-605 Report to the Legislature.

The office shall report annually to the Public Utilities and Technology Interim Committee and the Revenue and Taxation Interim Committee describing:

- (1) the office's success in attracting high cost infrastructure projects to the state and the resulting increase in infrastructure-related revenue under this part;
- (2) the amount of tax credits the office has granted or will grant and the time period during which the tax credits have been or will be granted; and
- (3) the economic impact on the state by comparing infrastructure-related revenue to tax credits that have been or will be granted under this part.

Enacted by Chapter 356, 2015 General Session

Chapter 5 Resource Development Act

Part 1 General Provisions

63M-5-101 Title.

This chapter is known as the "Resource Development Act."

Enacted by Chapter 382, 2008 General Session

63M-5-102 Policy -- Legislative recognition.

- (1) The Legislature declares that the policy of this state is:
 - (a) to encourage industrial development and the development and utilization of the natural resources in this state in order to promote the economic development of this state and to provide benefits to the citizens of this state and other states; and
 - (b) to encourage co-operation between the state and its agencies and political subdivisions with individuals, firms, and business organizations to provide for industrial development and the development and utilization of the natural resources of this state.
- (2) The Legislature recognizes that:
 - (a) industrial development and the development and utilization of the natural resources in this state, particularly in rural areas, may have a significant financial impact on state agencies and units of local government unless adequate financing is made available to these state agencies and units of local government to enable them to provide necessary public works and improvements and public services prior to completion of natural resource and industrial facilities; and
 - (b) because of the time lag between the financial impact on affected units of government and the normal beginning of the receipt of additional tax revenues from this development normally begins, it may be necessary and in the public interest of this state and its political subdivisions to provide through utilization of ad valorem taxes funds for these necessary public works and improvements; and
 - (c) these necessary public works and improvements may in part be of benefit primarily to the industrial developer or the person developing or utilizing the natural resources in this state.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-103 Definitions.

As used in this chapter:

- (1) "Commencement of construction" means any clearing of land, excavation, or construction but does not include preliminary site review, including soil tests, topographical surveys, exploratory drilling, boring or mining, or other preliminary tests.
- (2) "Developer" means any person engaged or to be engaged in industrial development or the development or utilization of natural resources in this state through a natural resource or industrial facility, including owners, contract purchases of owners, and persons who, as a lessee or under an agreement, are engaged or to be engaged in industrial development or the development or utilization of natural resources in this state through a natural resource or industrial facility.
- (3) "Major developer" means any developer whose proposed new or additional natural resource facility or industrial facility is projected:
 - (a) To employ more than 500 people; or
 - (b) To cause the population of an affected unit of local government to increase by more than 5%, the increase to include the primary work force of the facility and their dependents and the work force and dependents attributable to commercial and public service employment created by the presence of the facility.
- (4) "Natural resource facility" or "industrial facility" means any land, structure, building, plant, mine, road, installation, excavation, machinery, equipment, or device, or any addition to, reconstruction, replacement, or improvement of, land or an existing structure, building, plant, mine, road, installation, excavation, machinery, or device reasonably used, erected,

constructed, acquired, or installed by any person, if a substantial purpose of or result of the use, erection, construction, acquisition, rental, lease, or installation is related to industrial development or the development or utilization of the natural resources in this state.

- (5) "Person" includes any individual, firm, co-partnership, joint venture, corporation, estate, trust, business trust, syndicate, or any group or combination acting as a unit.
- (6) "Unit of local government" means any county, municipality, school district, local district, special service district, or any other political subdivision of the state.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2 Prepayments

63M-5-201 Prepayment of ad valorem property taxes on natural resources or industrial facility.

The developer also may prepay, with the consent of the governing bodies of the units of local government affected, to the county treasurer, or to other persons authorized by the governing body of a unit of local government under Section 63M-5-306, a portion of the ad valorem property taxes which the developer anticipates will be imposed by the unit of local government under Title 59, Chapter 2, Part 9, Levies, in connection with the natural resources or industrial facility. Ad valorem property taxes prepaid under this chapter may not act as an abatement of the ad valorem property tax but rather shall be construed as a prepayment for which, notwithstanding Section 59-2-1321 or any statute of limitations to the contrary, a credit will be given the developer making the prepayment at the time the ad valorem property taxes become due and otherwise payable.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 3 Use of Funds

63M-5-301 State Board of Education and Department of Transportation to prepare budget and submit to governor.

The State Board of Education and the Department of Transportation shall prepare and submit to the governor, to be included in the governor's budget to the Legislature, a budget of the requirements for carrying out the provisions of this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-302 Appropriations for use of funds -- Board of Education and Department of Transportation -- Repayment by Board of Education -- Board of Education and Transportation Commission requirements.

- (1) The funds needed for construction of schools and highways and any of their related facilities as a result of industrial development or as a result of development or utilization of natural resources in this state through natural resource or industrial facilities shall be made available

from the Prepaid Sales and Use Tax Construction Account through appropriations by the Legislature.

- (2) Appropriations will be made to the State Board of Education and the Department of Transportation for specific public facilities related to a specific natural resource or industrial facility.
- (3)
 - (a) Appropriations made to the State Board of Education for schools and related facilities shall be repaid to the General Fund through property tax assessments by the school district within whose boundary the natural resource or industrial facility is located.
 - (b) The repayment shall be made within a period of six years from the date of substantial completion of the natural resource or industrial facility or from the date the school district has a taxable value exceeding \$50,000,000, whichever occurs first.
 - (c) A refund shall be made to the developer of the natural resource or industrial facility to the extent of sales and use taxes prepaid by the developer in accordance with this chapter and appropriated by the Legislature for the specific public school facility, which have not been credited against sales and use taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act.
- (4) The State Board of Education shall:
 - (a) determine school facility needs as respective communities develop by consulting with the school district within whose boundary the development project is located; and
 - (b) recommend to the Legislature the amount to be appropriated at each session of the Legislature.
- (5) The Transportation Commission shall:
 - (a) determine highway needs in the area of the natural resource or industrial facility;
 - (b) determine whether the highway should be a part of the state highway system; and
 - (c) recommend to the Legislature the amounts to be appropriated to the Department of Transportation for use on the highways.
- (6)
 - (a) The State Board of Education and the Department of Transportation shall assess and determine in connection with each public facility the portion of each facility of benefit primarily to the industrial developer or the person developing or utilizing the natural resources.
 - (b) The assessment shall be reported to the Legislature to be used in determining the amount to be appropriated subject to this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-303 Public facility -- Prepayment of sales and use tax in installments.

Notwithstanding anything to the contrary contained in this chapter, prepaid sales or use taxes sufficient to construct a particular public facility need not be prepaid in one sum but may be prepaid in installments as may be required by the state or any of its agencies or political subdivisions in fulfilling contractual commitments for the construction of the public facility if the state receives assurance that the funds for the agreed project will be prepaid to the State Tax Commission at the time or times for which the state or any of its agencies or political subdivisions have made contractual commitments for the disbursement of these funds for the public facility. In no event shall the total accumulated prepayment be less than the amount of sales and use taxes due for the calendar quarters for which returns are required to be filed under Section 59-12-107.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-304 Department of Transportation and county executives -- Cooperation in development or utilization -- Written agreements authorized -- Survey and location work.

- (1) The Department of Transportation and county executives shall cooperate with persons engaged in industrial development or the development of or utilization of natural resources in this state through a natural resource or industrial facility who desire to assist this state or its counties in obtaining financing through prepaid sales or use taxes for improvements to existing state or county roads or the construction of new state or county roads which are necessary to provide access to areas of natural resource or industrial facilities.
- (2) Where it is determined that the improvements or construction referred to cannot be financed with existing public funds or when the necessary improvement or construction would be unduly delayed by postponing the improvements or construction until funds are otherwise available and the Legislature has appropriated the necessary funds pursuant to Section 63M-5-302, the Department of Transportation or any county executive may enter into written agreements with the person engaged or to be engaged in industrial development or the development or utilization of natural resources through a natural resource or industrial facility providing for the necessary improvements or construction if that person agrees to the prepayment of sales or use taxes as provided in this chapter to the extent necessary to provide the funds needed to finance the necessary improvements or construction.
- (3) The agreements shall include the assurances necessary to provide the state or the county adequate funds for the payment of all obligations incurred by the state or county for the necessary improvements or construction and for the transfer of funds and all necessary adjustments, if the funds prepaid exceed the actual expenditures made for the improvements or construction.
- (4) If the actual expenditures made by the state, its agencies, or political subdivisions for the improvements or construction exceed the amount of prepaid sales and use taxes actually imposed by Title 59, Chapter 12, Sales and Use Tax Act, then no refund shall be allowed for the excess amount prepaid as sales or use taxes.
- (5) Initial survey and location work by the Department of Transportation or a county may proceed prior to the execution of any agreements if otherwise authorized and funded.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-305 Tax Commission -- Rules and regulations.

For the purpose of more efficiently administering this act the State Tax Commission is authorized in its discretion to formulate, amend, or cancel rules and regulations establishing procedures regarding matters pertaining to the prepayment of sales or use taxes as provided in this act and the credit against sales or use taxes as the same become due and otherwise payable.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-5-306 Financial impact statement -- Alleviation plan -- Filing required -- Contents -- Payments credited against tax -- Provisions neither exclusive nor mandatory.

- (1)
 - (a) A developer desiring to prepay ad valorem property taxes under Section 63M-5-201 shall first prepare and file with the Governor's Office of Economic Development and all units of local government likely to be affected with a significant financial impact due to a natural resource

- or industrial facility a financial impact statement together with a plan for alleviating these impacts.
- (b) The impact statement and the alleviation plan shall be prepared in cooperation with and after consultation with the Governor's Office of Economic Development and the affected units of local government.
 - (c) The financial impact statement shall assess the projected financial impact on state agencies and units of local government, including the impact on transportation systems, culinary water systems, waste treatment facilities, public safety, schools, public health, housing, planning and zoning, and general government administration.
 - (d) The alleviation plan shall set out proposals for alleviating the impact and may include payments to local units of government or direct expenditures by the developer to alleviate the impact.
 - (e) The impact statement and the alleviation plan may be amended by the developer in cooperation with and after consultation with the Governor's Office of Economic Development and those units of local government affected by the amendment.
- (2) At least 90 days prior to commencement of construction of an industrial facility or natural resources facility by a major developer, an impact statement and alleviation plan as described in Subsection (1) shall be filed by the major developer whether or not the major developer desires to prepay ad valorem property taxes.
- (3)
- (a) Upon the filing of the financial impact statement and alleviation plan, a developer may apply to the governing body of the affected unit of local government for authorization to prepay a portion of the anticipated ad valorem property taxes to be expended consistent with the alleviation plan.
 - (b) This authorization may provide that only a portion of the amounts so prepaid can be applied against the ad valorem property taxes due in any given year.
 - (c) In addition to payments directly to the affected unit of local government, an affected unit of local government may authorize a tax credit on anticipated ad valorem property taxes for expenditures made by the developer to other persons so long as the expenditure is consistent with the alleviation plan.
- (4)
- (a) This chapter is designed to provide an additional mechanism for the alleviation of impacts on units of local government and is not intended to discourage the use of other mechanisms as may be available.
 - (b) Nothing in this chapter requires a developer to prepay ad valorem property taxes or to make any other expenditure not otherwise required by law.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 6

Military Base Easements Act

Part 1

General Provisions

63M-6-101 Title.

This chapter is known as the "Military Base Easements Act."

Enacted by Chapter 382, 2008 General Session

Part 2
Easements and Improvements

63M-6-201 Acquisition of easements -- Restrictions -- Resale.

- (1)
- (a) The Governor's Office of Economic Development shall acquire, by purchase or condemnation, easements for the establishment, maintenance, and operation of a restrictive use area for the operation of aircraft to and from Hill Air Force Base because:
 - (i) Hill Air Force Base is a military installation of vital importance to security of the United States of America and to the economic well-being of the citizens of Utah;
 - (ii) there are certain portions of land around the entire base that are being developed for residential and other uses that are incompatible with current and future operations of the base because of noise, health, safety, and accident reasons; and
 - (iii) it is the purpose of this chapter for the state to acquire those easements restricting the use of those lands and the air space above them in order to assure the continued operation of Hill Air Force Base as an active military base and to protect the health, safety, and economic well-being of the citizens of Utah.
 - (b) The Governor's Office of Economic Development may delegate its power to purchase or condemn easements under this subsection to other state agencies if the department ensures that those agencies comply with the procedures and requirements of this chapter.
- (2)
- (a) The Governor's Office of Economic Development shall ensure that the easements restrict the land from those uses identified in the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as amended, dated October, 1982, as not being acceptable.
 - (b) The Governor's Office of Economic Development may allow certain other uses not prohibited by those guidelines if those uses are consistent with the purpose of this chapter.
 - (c) Nothing in this chapter may be construed to authorize the Governor's Office of Economic Development or any other state agency to:
 - (i) acquire any ownership interest in real property other than an easement restricting the land from future uses inconsistent with the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as amended, dated October 1982;
 - (ii) purchase businesses; or
 - (iii) require people to relocate or move from their property.
 - (d) To calculate the purchase price for the easements, the Governor's Office of Economic Development shall subtract the market value of the real property and its improvements after the acquisition of the easements from the market value of the real property and its improvements before the acquisition of the easements.
 - (e) When the Hill Air Force Base runways have not been used for seven years to accommodate the arrival and departure of airplanes, the Governor's Office of Economic Development shall:
 - (i) notify by certified mail each current owner of the property to which each easement is attached;

- (ii) inform that owner that the owner may purchase the easement from the state for the same price that the state paid for it originally or for the market value of the easement at the time of the buyback, whichever is smaller; and
 - (iii) sell the easement to the owner of the property to which the easement is attached if the owner tenders the purchase price.
 - (f) In addition to purchasing the easements required by this chapter, the Governor's Office of Economic Development may provide reasonable relocation expenses to all churches, businesses, and schools that, as of March 1, 1994, were located either within the north Hill Air Force Base accident potential zone (APZ) identified in Subsection 63M-6-202(1)(a) or within the south Hill Air Force Base accident potential zone (APZ) identified in Subsection 63M-6-202(1)(b) if those churches, businesses, and schools can reasonably demonstrate that expansion of the use would have been permitted before acquisition of the easements but is now prohibited because of the easement.
- (3)
- (a) The Governor's Office of Economic Development may take action to enforce the provisions of this chapter.
 - (b) The attorney general shall represent the Governor's Office of Economic Development in that action.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-6-202 Location of easements.

- (1) The Governor's Office of Economic Development or its designees may acquire easements on the land within the following boundaries:
 - (a) beginning on the north Hill Air Force Base accident potential zone (APZ) at a point which is North 1,089,743.170 meters and East 459,346.946 meters based on the North zone, State of Utah, NAD 83 coordinates and runs north to North 63 degrees 10 minutes 44 seconds, East 457.109 meters, North 26 degrees 49 minutes 16 seconds, West 3,352.129 meters, South 63 degrees 10 minutes 44 seconds, West 914.217 meters, South 26 degrees 49 minutes 16 seconds, East 3,352.129 meters, North 63 degrees 10 minutes 44 seconds, East 457.109 meters back to the point of beginning; and
 - (b) beginning on the south Hill Air Force Base APZ which is North 1,086,065.786 meters and East 461,206.222 meters based on the North zone, State of Utah, NAD 83 coordinates and runs South 63 degrees 10 minutes 44 seconds, West 457.109 meters, South 26 degrees 49 minutes 16 seconds, East 502.179 meters, South 0 degrees 20 minutes 35 seconds, West 1,722.227 meters, South 89 degrees 39 minutes 25 seconds, East 883.743 meters, North 63 degrees 10 minutes 44 seconds, East 914.217 meters, North 26 degrees 49 minutes 16 seconds, West 2,437.912 meters, South 63 degrees 10 minutes 44 seconds, West 457.109 meters back to the point of beginning.
- (2) The Governor's Office of Economic Development or its designees may acquire easements on the following land that is located inside the 75 and 80 level day-night (LDN) noise contour as identified in the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as amended, dated October, 1982:
 - (a) in the west half of Section 3, T4NR1W;
 - (b) in the east half of Section 4, T4NR1W;
 - (c) in the northeast quarter of Section 8, T4NR1W;
 - (d) within all of Section 9, T4NR1W;
 - (e) in the northwest quarter of Section 10, T4NR1W;

- (f) within the southwest quarter of Section 19, T5NR1W;
- (g) in the south half of Section 20, T5NR1W;
- (h) within the southwest quarter of Section 28, T5NR1W; and
- (i) within Section 29, T5NR1W.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-6-203 Certain improvements, alterations, and expansions prohibited.

- (1) A person or entity may not begin to develop, or authorize development, on any land identified in this chapter until the Governor's Office of Economic Development has affirmatively authorized the development of the land because the development is consistent with those uses identified in the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as amended, dated October 1982.
- (2) Nothing in this chapter prohibits any property owner from improving, altering, or expanding any existing residential or commercial use of the property owner's property so long as the improvement, alteration, or expansion does not materially increase the human density of that present use.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 7 Criminal Justice and Substance Abuse

Part 1 General Provisions

63M-7-101 Title.

This chapter is known as "Criminal Justice and Substance Abuse."

Enacted by Chapter 382, 2008 General Session

Part 2 Commission on Criminal and Juvenile Justice

63M-7-201 Creation -- Purpose.

- (1) The State Commission on Criminal and Juvenile Justice is created within the governor's office.
- (2) The commission's purpose is to:
 - (a) promote broad philosophical agreement concerning the objectives of the criminal and juvenile justice system in Utah;
 - (b) provide a mechanism for coordinating the functions of the various branches and levels of government concerned with criminal and juvenile justice to achieve those objectives;
 - (c) coordinate statewide efforts to reduce crime and victimization in Utah; and
 - (d) accomplish the duties enumerated in Section 63M-7-204.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-202 Composition -- Appointments -- Ex officio members -- Terms -- U.S. Attorney as nonvoting member.

- (1) The commission on criminal and juvenile justice shall be composed of 21 voting members as follows:
 - (a) the chief justice of the supreme court, as the presiding officer of the judicial council, or a judge designated by the chief justice;
 - (b) the state court administrator;
 - (c) the executive director of the Department of Corrections;
 - (d) the director of the Division of Juvenile Justice Services;
 - (e) the commissioner of the Department of Public Safety;
 - (f) the attorney general;
 - (g) the president of the chiefs of police association or a chief of police designated by the association's president;
 - (h) the president of the sheriffs' association or a sheriff designated by the association's president;
 - (i) the chair of the Board of Pardons and Parole or a member designated by the chair;
 - (j) the chair of the Utah Sentencing Commission;
 - (k) the chair of the Utah Substance Abuse Advisory Council;
 - (l) the chair of the Utah Board of Juvenile Justice;
 - (m) the chair of the Utah Council on Victims of Crime or the chair's designee;
 - (n) the director of the Division of Substance Abuse and Mental Health; and
 - (o) the following members designated to serve four-year terms:
 - (i) a juvenile court judge, appointed by the chief justice, as presiding officer of the Judicial Council;
 - (ii) a representative of the statewide association of public attorneys designated by the association's officers;
 - (iii) one member of the House of Representatives who is appointed by the speaker of the House of Representatives; and
 - (iv) one member of the Senate who is appointed by the president of the Senate.
- (2) The governor shall appoint the remaining three members to four-year staggered terms as follows:
 - (a) one criminal defense attorney appointed from a list of three nominees submitted by the Utah State Bar Association;
 - (b) one representative of public education; and
 - (c) one citizen representative.
- (3) In addition to the members designated under Subsections (1) and (2), the United States Attorney for the district of Utah may serve as a nonvoting member.
- (4) In appointing the members under Subsection (2), the governor shall take into account the geographical makeup of the commission.

Amended by Chapter 39, 2010 General Session

63M-7-203 Executive director -- Qualifications -- Compensation -- Appointment -- Functions.

- (1) The governor, with the consent of the Senate, shall appoint a person experienced in the field of criminal justice and in administration as the executive director of the Commission on Criminal and Juvenile Justice. The governor shall establish the executive director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

- (2)
 - (a) The executive director, under the direction of the commission, shall administer the duties of the commission and act as the governor's advisor on national, state, regional, metropolitan, and local government planning as it relates to criminal justice.
 - (b) This chapter does not derogate the planning authority conferred on state, regional, metropolitan, and local governments by existing law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-204 Duties of commission.

The State Commission on Criminal and Juvenile Justice administration shall:

- (1) promote the commission's purposes as enumerated in Section 63M-7-201;
- (2) promote the communication and coordination of all criminal and juvenile justice agencies;
- (3) study, evaluate, and report on the status of crime in the state and on the effectiveness of criminal justice policies, procedures, and programs that are directed toward the reduction of crime in the state;
- (4) study, evaluate, and report on programs initiated by state and local agencies to address reducing recidivism, including changes in penalties and sentencing guidelines intended to reduce recidivism, costs savings associated with the reduction in the number of inmates, and evaluation of expenses and resources needed to meet goals regarding the use of treatment as an alternative to incarceration, as resources allow;
- (5) study, evaluate, and report on policies, procedures, and programs of other jurisdictions which have effectively reduced crime;
- (6) identify and promote the implementation of specific policies and programs the commission determines will significantly reduce crime in Utah;
- (7) provide analysis and recommendations on all criminal and juvenile justice legislation, state budget, and facility requests, including program and fiscal impact on all components of the criminal and juvenile justice system;
- (8) provide analysis, accountability, recommendations, and supervision for state and federal criminal justice grant money;
- (9) provide public information on the criminal and juvenile justice system and give technical assistance to agencies or local units of government on methods to promote public awareness;
- (10) promote research and program evaluation as an integral part of the criminal and juvenile justice system;
- (11) provide a comprehensive criminal justice plan annually;
- (12) review agency forecasts regarding future demands on the criminal and juvenile justice systems, including specific projections for secure bed space;
- (13) promote the development of criminal and juvenile justice information systems that are consistent with common standards for data storage and are capable of appropriately sharing information with other criminal justice information systems by:
 - (a) developing and maintaining common data standards for use by all state criminal justice agencies;
 - (b) annually performing audits of criminal history record information maintained by state criminal justice agencies to assess their accuracy, completeness, and adherence to standards;
 - (c) defining and developing state and local programs and projects associated with the improvement of information management for law enforcement and the administration of justice; and

- (d) establishing general policies concerning criminal and juvenile justice information systems and making rules as necessary to carry out the duties under this Subsection (13) and Subsection (11);
- (14) allocate and administer grants, from money made available, for approved education programs to help prevent the sexual exploitation of children;
- (15) allocate and administer grants funded from money from the Law Enforcement Operations Account created in Section 51-9-411 for law enforcement operations and programs related to reducing illegal drug activity and related criminal activity;
- (16) request, receive, and evaluate data and recommendations collected and reported by agencies and contractors related to policies recommended by the commission regarding recidivism reduction; and
- (17) establish and administer a performance incentive grant program that allocates funds appropriated by the Legislature to programs and practices implemented by counties that reduce recidivism and reduce the number of offenders per capita who are incarcerated.

Amended by Chapter 412, 2015 General Session

63M-7-205 Annual report by the commission.

- (1) The commission shall annually prepare and publish a report directed to the governor, the Legislature, and the Judicial Council.
- (2) The report shall describe how the commission fulfilled its statutory purposes and duties during the year.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-206 Election of chair -- Meetings.

The membership of the Commission on Criminal and Juvenile Justice by simple majority vote of those in attendance shall annually elect one of their number to serve as chair. The chair is responsible for the call and conduct of meetings. Meetings shall be called and held at least bimonthly. One of the bimonthly meetings shall be held while the Legislature is convened in its annual session. Additional meetings may be called upon request by a majority of the commission's members.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-207 Members serve without pay -- Reimbursement for expenses.

- (1) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (2) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

Part 3

Utah Substance Abuse Advisory Council

63M-7-301 Definitions -- Creation of council -- Membership -- Terms.

- (1)
- (a) As used in this part, "council" means the Utah Substance Abuse Advisory Council created in this section.
 - (b) There is created within the governor's office the Utah Substance Abuse Advisory Council.
- (2) The council shall be comprised of the following voting members:
- (a) the attorney general or the attorney general's designee;
 - (b) a county commissioner designated by the Utah Association of Counties;
 - (c) the commissioner of public safety or the commissioner's designee;
 - (d) the director of the Division of Substance Abuse and Mental Health or the director's designee;
 - (e) the state superintendent of public instruction or the superintendent's designee;
 - (f) the director of the Department of Health or the director's designee;
 - (g) the executive director of the Commission on Criminal and Juvenile Justice or the executive director's designee;
 - (h) the governor or the governor's designee;
 - (i) the executive director of the Department of Corrections or the executive director's designee;
 - (j) the director of the Division of Juvenile Justice Services or the director's designee;
 - (k) the executive director of the private nonprofit Utah Domestic Violence Council or the executive director's designee;
 - (l) the director of the Division of Indian Affairs or the director's designee;
 - (m) the state court administrator or the state court administrator's designee;
 - (n) the following members designated to serve four-year terms:
 - (i) a member of the House of Representatives designated by the speaker of the House of Representatives;
 - (ii) a member of the Senate designated by the president of the Senate; and
 - (iii) a representative designated by the Utah League of Cities and Towns;
 - (o) the following members appointed by the governor to serve four-year terms:
 - (i) a representative of the Utah National Guard;
 - (ii) one resident of the state who has been personally affected by alcohol or other drug abuse; and
 - (iii) one citizen representative;
 - (p) in addition to the voting members described in Subsections (2)(a) through (o), the following voting members may be appointed by a majority of the members described in Subsections (2)(a) through (o) to serve four-year terms:
 - (i) a person knowledgeable in criminal justice issues;
 - (ii) a person knowledgeable in substance abuse treatment issues;
 - (iii) a person knowledgeable in substance abuse prevention issues; and
 - (iv) a person knowledgeable in judiciary issues; and
 - (q) in addition to the voting members described in Subsections (2)(a) through (p), one or more chairs or co-chairs of a committee established by the council under Subsection 63M-7-302(5) may be appointed as a voting member by a majority of the members described in Subsections (2)(a) through (p).
- (3) A person other than a person described in Subsection (2) may not be appointed as a voting member of the council.

Amended by Chapter 212, 2012 General Session

63M-7-302 Chair -- Vacancies -- Quorum -- Expenses.

- (1) The Utah Substance Abuse Advisory Council shall annually select one of its members to serve as chair and one of its members to serve as vice chair.
- (2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the position was originally filled.
- (3) A majority of the members of the council constitutes a quorum.
- (4)
 - (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
 - (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (5) The council may establish committees as needed to assist in accomplishing its duties under Section 63M-7-303.

Amended by Chapter 387, 2014 General Session

63M-7-303 Duties of council.

- (1) The Utah Substance Abuse Advisory Council shall:
 - (a) provide leadership and generate unity for Utah's ongoing efforts to combat substance abuse;
 - (b) recommend and coordinate the creation, dissemination, and implementation of a statewide substance abuse policy;
 - (c) facilitate planning for a balanced continuum of substance abuse prevention, treatment, and justice services;
 - (d) promote collaboration and mutually beneficial public and private partnerships;
 - (e) coordinate recommendations made by any committee created under Section 63M-7-302;
 - (f) analyze and provide an objective assessment of all proposed legislation concerning alcohol and other drug issues;
 - (g) coordinate the implementation of Section 77-18-1.1 and related provisions in Subsections 77-18-1(5)(b)(iii) and (iv), as provided in Section 63M-7-305; and
 - (h) comply with Section 32B-2-306.
- (2) The council shall meet quarterly or more frequently as determined necessary by the chair.
- (3) The council shall report its recommendations annually to the commission, governor, the Legislature, and the Judicial Council.

Amended by Chapter 120, 2014 General Session

63M-7-304 Chair -- Vacancies -- Quorum -- Expenses.

- (1) The members of each committee established by the council shall annually select a chair or co-chairs from among the members of the committee.
- (2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the position was originally filled.

- (3) A majority of the members of a committee constitutes a quorum for the transaction of business by the committee.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 39, 2010 General Session

Amended by Chapter 286, 2010 General Session

63M-7-305 Drug Offender Reform Act -- Coordination.

- (1) As used in this section:
 - (a) "Council" means the Utah Substance Abuse Advisory Council.
 - (b) "Drug Offender Reform Act" and "act" mean the screening, assessment, substance abuse treatment, and supervision provided to convicted offenders under Subsection 77-18-1.1(2) to:
 - (i) determine offenders' specific substance abuse treatment needs as early as possible in the judicial process;
 - (ii) expand treatment resources for offenders in the community;
 - (iii) integrate treatment of offenders with supervision by the Department of Corrections; and
 - (iv) reduce the incidence of substance abuse and related criminal conduct.
 - (c) "Substance abuse authority" has the same meaning as in Section 17-43-201.
- (2) The council shall provide ongoing oversight of the implementation, functions, and evaluation of the Drug Offender Reform Act.
- (3) The council shall develop an implementation plan for the Drug Offender Reform Act. The plan shall:
 - (a) identify local substance abuse authority areas where the act will be implemented, in cooperation with the Division of Substance Abuse and Mental Health, the Department of Corrections, and the local substance abuse authorities;
 - (b) include guidelines on how funds appropriated under the act should be used;
 - (c) require that treatment plans under the act are appropriate for criminal offenders;
 - (d) include guidelines on the membership of local planning groups;
 - (e) include guidelines on the membership of the Department of Corrections' planning group under Subsection (5); and
 - (f) provide guidelines for the Commission on Criminal and Juvenile Justice to conduct an evaluation of the implementation, impact, and results of the act.
- (4)
 - (a) Each local substance abuse authority designated under Subsection (3) to implement the act shall establish a local planning group and shall submit a plan to the council detailing how the authority proposes to use the act funds. The uses shall be in accordance with the guidelines established by the council under Subsection (3).
 - (b) Upon approval of the plan by the council, the Division of Substance Abuse and Mental Health shall allocate the funds.
 - (c) Local substance abuse authorities shall annually, on or before October 1, submit to the Division of Substance Abuse and Mental Health and to the council reports detailing use of the funds and the impact and results of the use of the funds during the prior fiscal year ending June 30.
- (5)

- (a) The Department of Corrections shall establish a planning group and shall submit a plan to the council detailing how the department proposes to use the act funds. The uses shall be in accordance with the guidelines established by the council under Subsection (3).
- (b) The Department of Corrections shall annually, before October 1, submit to the council a report detailing use of the funds and the impact and results of the use of the funds during the prior fiscal year ending June 30.
- (6) The council shall monitor the progress and evaluation of the act and shall provide a written report on the implementation, impact, and results of the act to the Law Enforcement and Criminal Justice and the Health and Human Services legislative interim committees annually before November 1.

Amended by Chapter 51, 2011 General Session

63M-7-306 Staffing.

The Commission on Criminal and Juvenile Justice shall provide staff to the council and any committee established by the council.

Amended by Chapter 39, 2010 General Session

Part 4

Sentencing Commission

63M-7-401 Creation -- Members -- Appointment -- Qualifications.

- (1) There is created a state commission to be known as the Sentencing Commission composed of 27 members. The commission shall develop by-laws and rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and elect its officers.
- (2) The commission's members shall be:
 - (a) two members of the House of Representatives, appointed by the speaker of the House and not of the same political party;
 - (b) two members of the Senate, appointed by the president of the Senate and not of the same political party;
 - (c) the executive director of the Department of Corrections or a designee appointed by the executive director;
 - (d) the director of the Division of Juvenile Justice Services or a designee appointed by the director;
 - (e) the executive director of the Commission on Criminal and Juvenile Justice or a designee appointed by the executive director;
 - (f) the chair of the Board of Pardons and Parole or a designee appointed by the chair;
 - (g) the chair of the Youth Parole Authority or a designee appointed by the chair;
 - (h) two trial judges and an appellate judge appointed by the chair of the Judicial Council;
 - (i) two juvenile court judges designated by the chair of the Judicial Council;
 - (j) an attorney in private practice who is a member of the Utah State Bar, experienced in criminal defense, and appointed by the Utah Bar Commission;
 - (k) an attorney who is a member of the Utah State Bar, experienced in the defense of minors in juvenile court, and appointed by the Utah Bar Commission;
 - (l) the director of Salt Lake Legal Defenders or a designee appointed by the director;

- (m) the attorney general or a designee appointed by the attorney general;
- (n) a criminal prosecutor appointed by the Statewide Association of Public Attorneys;
- (o) a juvenile court prosecutor appointed by the Statewide Association of Public Attorneys;
- (p) a representative of the Utah Sheriff's Association appointed by the governor;
- (q) a chief of police appointed by the governor;
- (r) a licensed professional appointed by the governor who assists in the rehabilitation of adult offenders;
- (s) a licensed professional appointed by the governor who assists in the rehabilitation of juvenile offenders;
- (t) two members from the public appointed by the governor who exhibit sensitivity to the concerns of victims of crime and the ethnic composition of the population; and
- (u) one member from the public at large appointed by the governor.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-402 Terms of members -- Vacancies -- Reappointment.

- (1)
 - (a) Except as required by Subsection (1)(b), as terms of current commission members expire, the appointing authority shall appoint each new member or reappointed member to a four-year term.
 - (b) Notwithstanding the requirements of Subsection (1)(a), the appointing authority shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of commission members are staggered so that approximately half of the commission is appointed every two years.
- (2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
- (3) All members of the commission, including those appointed before July 1, 1995, shall be eligible for reappointment one time.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-403 Vacancies.

If a commission member no longer holds a qualifying position, resigns, or is unable to serve, the vacancy shall be filled by the appointing authority.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-404 Purpose -- Duties.

- (1) The purpose of the commission shall be to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council about the sentencing and release of juvenile and adult offenders in order to:
 - (a) respond to public comment;
 - (b) relate sentencing practices and correctional resources;
 - (c) increase equity in criminal sentencing;
 - (d) better define responsibility in criminal sentencing; and
 - (e) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority.
- (2)

- (a) The commission shall modify the sentencing guidelines for adult offenders to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism.
 - (b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the public and ensuring efficient use of state funds.
- (3)
- (a) The commission shall modify the criminal history score in the sentencing guidelines for adult offenders to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism.
 - (b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again.
- (4)
- (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on probation and:
 - (i) who have violated one or more conditions of probation; and
 - (ii) whose probation has been revoked by the court.
 - (b) The guidelines shall consider the seriousness of the violation of the conditions of probation, the probationer's conduct while on probation, and the probationer's criminal history.
- (5)
- (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on parole and:
 - (i) who have violated a condition of parole; and
 - (ii) whose parole has been revoked by the Board of Pardons and Parole.
 - (b) The guidelines shall consider the seriousness of the violation of the conditions of parole, the individual's conduct while on parole, and the individual's criminal history.
- (6) The commission shall establish graduated sanctions to facilitate the prompt and effective response to an individual's violation of the terms of probation or parole by the adult probation and parole section of the Department of Corrections in order to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism, including:
- (a) sanctions to be used in response to a violation of the terms of probation or parole;
 - (b) when violations should be reported to the court or the Board of Pardons and Parole; and
 - (c) a range of sanctions that may not exceed a period of incarceration of more than:
 - (i) three consecutive days; and
 - (ii) a total of five days in a period of 30 days.
- (7) The commission shall establish graduated incentives to facilitate a prompt and effective response by the adult probation and parole section of the Department of Corrections to an offender's:
- (a) compliance with the terms of probation or parole; and
 - (b) positive conduct that exceeds those terms.

Amended by Chapter 412, 2015 General Session

63M-7-405 Compensation of members -- Reports to the Legislature, the courts, and the governor.

(1)

- (a) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (i) Section 63A-3-106;
 - (ii) Section 63A-3-107; and
 - (iii) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (b) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
- (2) The commission shall submit to the Legislature, the courts, and to the governor at least 60 days prior to the annual general session of the Legislature its reports and recommendations for sentencing guidelines and amendments. It is intended that the commission utilize existing data and resources from state criminal justice agencies. The commission is authorized to employ professional assistance and other staff members as it considers necessary or desirable.
- (3) The commission shall be responsive to all three branches of government, but be part of the Commission on Criminal and Juvenile Justice for coordination on criminal and juvenile justice issues, budget, and administrative support.

Amended by Chapter 387, 2014 General Session

63M-7-406 Publication of reports.

The commission shall also be authorized to prepare, publish, and distribute from time to time reports of its studies, recommendations, and statements.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 5

Utah Office for Victims of Crime

63M-7-501 Title.

This part is known as the "Utah Office for Victims of Crime" and may be abbreviated as the "UOVC."

Amended by Chapter 131, 2011 General Session

63M-7-502 Definitions.

As used in this chapter:

- (1) "Accomplice" means a person who has engaged in criminal conduct as defined in Section 76-2-202.
- (2) "Board" means the Crime Victim Reparations and Assistance Board created under Section 63M-7-504.
- (3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- (4) "Claim" means:
 - (a) the victim's application or request for a reparations award; and
 - (b) the formal action taken by a victim to apply for reparations pursuant to this chapter.
- (5) "Claimant" means any of the following claiming reparations under this chapter:
 - (a) a victim;
 - (b) a dependent of a deceased victim;

- (c) a representative other than a collateral source; or
- (d) the person or representative who files a claim on behalf of a victim.
- (6) "Child" means an unemancipated person who is under 18 years of age.
- (7) "Collateral source" means the definition as provided in Section 63M-7-513.
- (8) "Contested case" means a case which the claimant contests, claiming the award was either inadequate or denied, or which a county attorney, a district attorney, a law enforcement officer, or other individual related to the criminal investigation proffers reasonable evidence of the claimant's lack of cooperation in the prosecution of a case after an award has already been given.
- (9)
 - (a) "Criminally injurious conduct" other than acts of war declared or not declared means conduct that:
 - (i) is or would be subject to prosecution in this state under Section 76-1-201;
 - (ii) occurs or is attempted;
 - (iii) causes, or poses a substantial threat of causing, bodily injury or death;
 - (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct possessed the capacity to commit the conduct; and
 - (v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft, or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as any offense chargeable as driving under the influence of alcohol or drugs.
 - (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C. Sec. 2331 committed outside of the United States against a resident of this state. "Terrorism" does not include an "act of war" as defined in 18 U.S.C. Sec. 2331.
- (10) "Dependent" means a natural person to whom the victim is wholly or partially legally responsible for care or support and includes a child of the victim born after the victim's death.
- (11) "Dependent's economic loss" means loss after the victim's death of contributions of things of economic value to the victim's dependent, not including services the dependent would have received from the victim if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of victim's death.
- (12) "Dependent's replacement services loss" means loss reasonably and necessarily incurred by the dependent after the victim's death in obtaining services in lieu of those the decedent would have performed for the victim's benefit if the victim had not suffered the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not subtracted in calculating the dependent's economic loss.
- (13) "Director" means the director of the Utah Office for Victims of Crime.
- (14) "Disposition" means the sentencing or determination of penalty or punishment to be imposed upon a person:
 - (a) convicted of a crime;
 - (b) found delinquent; or
 - (c) against whom a finding of sufficient facts for conviction or finding of delinquency is made.
- (15) "Economic loss" means economic detriment consisting only of allowable expense, work loss, replacement services loss, and if injury causes death, dependent's economic loss and dependent's replacement service loss. Noneconomic detriment is not loss, but economic detriment is loss although caused by pain and suffering or physical impairment.
- (16) "Elderly victim" means a person 60 years of age or older who is a victim.

- (17) "Fraudulent claim" means a filed claim based on material misrepresentation of fact and intended to deceive the reparations staff for the purpose of obtaining reparation funds for which the claimant is not eligible as provided in Section 63M-7-510.
- (18) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.
- (19) "Law enforcement officer" means a law enforcement officer as defined in Section 53-13-103.
- (20) "Medical examination" means a physical examination necessary to document criminally injurious conduct but does not include mental health evaluations for the prosecution and investigation of a crime.
- (21) "Mental health counseling" means outpatient and inpatient counseling necessitated as a result of criminally injurious conduct. The definition of mental health counseling is subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (22) "Misconduct" as provided in Subsection 63M-7-512(1)(b) means conduct by the victim which was attributable to the injury or death of the victim as provided by rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (23) "Noneconomic detriment" means pain, suffering, inconvenience, physical impairment, and other nonpecuniary damage, except as provided in this chapter.
- (24) "Pecuniary loss" does not include loss attributable to pain and suffering except as otherwise provided in this chapter.
- (25) "Offender" means a person who has violated the criminal code through criminally injurious conduct regardless of whether the person is arrested, prosecuted, or convicted.
- (26) "Offense" means a violation of the criminal code.
- (27) "Perpetrator" means the person who actually participated in the criminally injurious conduct.
- (28) "Reparations officer" means a person employed by the office to investigate claims of victims and award reparations under this chapter, and includes the director when the director is acting as a reparations officer.
- (29) "Replacement service loss" means expenses reasonably and necessarily incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed, not for income but the benefit of the injured person or the injured person's dependents if the injured person had not been injured.
- (30) "Representative" means the victim, immediate family member, legal guardian, attorney, conservator, executor, or an heir of a person but does not include service providers.
- (31) "Restitution" means money or services an appropriate authority orders an offender to pay or render to a victim of the offender's conduct.
- (32) "Secondary victim" means a person who is traumatically affected by the criminally injurious conduct subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (33) "Service provider" means a person or agency who provides a service to crime victims for a monetary fee except attorneys as provided in Section 63M-7-524.
- (34) "Utah Office for Victims of Crime" or "office" means the director, the reparations and assistance officers, and any other staff employed for the purpose of carrying out the provisions of this chapter.
- (35)
 - (a) "Victim" means a person who suffers bodily or psychological injury or death as a direct result of criminally injurious conduct or of the production of pornography in violation of Section 76-5b-201 if the person is a minor.
 - (b) "Victim" does not include a person who participated in or observed the judicial proceedings against an offender unless otherwise provided by statute or rule.

- (c) "Victim" includes a resident of this state who is injured or killed by an act of terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.
- (36) "Work loss" means loss of income from work the injured victim would have performed if the injured victim had not been injured and expenses reasonably incurred by the injured victim in obtaining services in lieu of those the injured victim would have performed for income, reduced by any income from substitute work the injured victim was capable of performing but unreasonably failed to undertake.

Amended by Chapter 369, 2012 General Session

63M-7-503 Restitution -- Reparations not to supplant restitution -- Assignment of claim for restitution judgment to Reparations Office.

- (1) A reparations award may not supplant restitution as established under Title 77, Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions.
- (2) The court may not reduce an order of restitution based on a reparations award.
- (3) If, due to reparation payments to a victim, the Utah Office for Victims of Crime is assigned under Section 63M-7-519 a claim for the victim's judgment for restitution or a portion of the restitution, the office may file with the sentencing court a notice of restitution listing the amounts or estimated future amounts of payments made or anticipated to be made to or on behalf of the victim. The Utah Office for Victims of Crime may provide a restitution notice to the victim or victim's representative prior to or at sentencing. The amount of restitution sought by the office may be updated at any time, subject to the right of the defendant to object. Failure to provide the notice may not invalidate the imposition of the judgment or order of restitution provided the defendant is given the opportunity to object and be heard as provided in this chapter. Any objection by the defendant to the imposition or amount of restitution shall be made at the time of sentencing or in writing within 20 days of the receipt of notice, to be filed with the court and a copy mailed to the Utah Office for Victims of Crime. Upon the filing of the objection, the court shall allow the defendant a full hearing on the issue as provided by Subsection 77-38a-302(4).
- (4) If no objection is made or filed by the defendant, then upon conviction and sentencing, the court shall enter a judgment for complete restitution pursuant to the provisions of Subsections 76-3-201(4)(c) and (d) and identify the office as the assignee of the assigned portion of the judgment and order of restitution.
- (5) If the notice of restitution is filed after sentencing but during the term of probation or parole, the court or Board of Pardons shall modify any existing civil judgment and order of restitution to include expenses paid by the office on behalf of the victim and identify the office as the assignee of the assigned portion of the judgment and order of restitution. If no judgment or order of restitution has been entered, the court shall enter a judgment for complete restitution and court-ordered restitution pursuant to the provisions of Sections 77-38a-302 and 77-38a-401.

Amended by Chapter 147, 2015 General Session

63M-7-504 Crime Victim Reparations and Assistance Board -- Members.

- (1)
 - (a) A Crime Victim Reparations and Assistance Board is created, consisting of seven members appointed by the governor with the consent of the Senate.
 - (b) The membership of the board shall consist of:
 - (i) a member of the bar of this state;

- (ii) a victim of criminally injurious conduct;
 - (iii) a licensed physician;
 - (iv) a representative of law enforcement;
 - (v) a mental health care provider;
 - (vi) a victim advocate; and
 - (vii) a private citizen.
- (c) The governor may appoint a chair of the board who shall serve for a period of time prescribed by the governor, not to exceed the length of the chair's term. The board may elect a vice chair to serve in the absence of the chair.
- (d) The board may hear appeals from administrative decisions as provided in rules adopted pursuant to Section 63M-7-515.
- (2)
- (a) Except as required by Subsection (2)(b), as terms of current board members expire, the governor shall appoint each new member or reappointed member to a four-year term.
 - (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
 - (c) A member may be reappointed to one successive term in addition to a member's initial full-term appointment.
- (3)
- (a) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.
 - (b) A member resigning from the board shall serve until the member's successor is appointed and qualified.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (5) The board shall meet at least once quarterly but may meet more frequently as necessary.

Amended by Chapter 131, 2011 General Session

63M-7-505 Board and office within Commission on Criminal and Juvenile Justice.

- (1) The Crime Victim Reparations and Assistance Board and the Utah Office for Victims of Crime are placed within the Commission on Criminal and Juvenile Justice for the provision by the commission of administrative and support services.
- (2) The board or the director may request assistance from the Commission on Criminal and Juvenile Justice, the Department of Public Safety, and other state agencies in conducting research or monitoring victims' programs.

Amended by Chapter 131, 2011 General Session

63M-7-506 Functions of board.

- (1) The Crime Victim Reparations and Assistance Board shall:
 - (a) adopt a description of the organization and prescribe the general operation of the board;
 - (b) prescribe policy for the Utah Office for Victims of Crime;

- (c) adopt rules to implement and administer this chapter pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining of terms not specifically stated in this chapter, and establishing of rules governing attorney fees;
 - (d) prescribe forms for applications for reparations;
 - (e) review all awards made by the reparations staff, although the board may not reverse or modify awards authorized by the reparations staff;
 - (f) render an annual report to the governor and the Legislature regarding the staff's and the board's activities;
 - (g) cooperate with the director and the director's staff in formulating standards for the uniform application of Section 63M-7-509, taking into consideration the rates and amounts of reparation payable for injuries and death under other laws of this state and the United States;
 - (h) allocate money available in the Crime Victim Reparations Fund to victims of criminally injurious conduct for reparations claims;
 - (i) allocate money available to other victim services as provided by administrative rule once a sufficient reserve has been established for reparation claims; and
 - (j) approve the allocation and disbursement of funds made available to the office by the United States, the state, foundations, corporations, or other entities or individuals to subgrantees from private, non-profit, and governmental entities operating qualified statewide assistance programs.
- (2) All rules, or other statements of policy, along with application forms specified by the board, are binding upon the director, the reparations officers, assistance officers, and other staff.

Amended by Chapter 131, 2011 General Session

63M-7-507 Director -- Appointment and functions.

The executive director of the Commission on Criminal and Juvenile Justice, after consulting with the board, shall appoint a director to carry out the provisions of this chapter. The director shall be an experienced administrator with a background in at least one of the following fields: social work, psychology, criminal justice, law, or a related field. The director shall demonstrate an understanding of the needs of crime victims and of services to victims. The director shall devote the director's time and capacity to the director's duties. The director shall:

- (1) hire staff, including reparations and assistance officers, as necessary;
- (2) act when necessary as a reparations officer in deciding initial claims;
- (3) possess the same investigation and decision-making authority as the reparations officers;
- (4) hear appeals from the decisions of the reparations officers, unless the director acted as a reparations officer on the initial claim;
- (5) serve as a liaison between the Utah Office for Victims of Crime and the board;
- (6) serve as the public relations representative of the office;
- (7) provide for payment of all administrative salaries, fees, and expenses incurred by the staff of the board, to be paid out of appropriations from the fund;
- (8) cooperate with the state treasurer and the state Division of Finance in causing the funds in the trust fund to be invested and its investments sold or exchanged and the proceeds and income collected;
- (9) apply for, receive, allocate, disburse, and account for, subject to approval and in conformance with policies adopted by the board, all grant funds made available by the United States, the state, foundations, corporations, and other businesses, agencies, or individuals;
- (10) obtain and utilize the services of other governmental agencies upon request; and

- (11) act in any other capacity or perform any other acts necessary for the office or board to successfully fulfill its statutory duties and objectives.

Amended by Chapter 131, 2011 General Session

63M-7-508 Reparations officers.

The reparations officers shall in addition to any assignments made by the director of the Utah Office for Victims of Crime:

- (1) hear and determine all matters relating to claims for reparations and reinvestigate or reopen claims without regard to statutes of limitation or periods of prescription;
- (2) obtain from prosecuting attorneys, law enforcement officers, and other criminal justice agencies, investigations and data to enable the reparations officer to determine whether and to what extent a claimant qualifies for reparations;
- (3) as determined necessary by the reparations officers, hold hearings, administer oaths or affirmations, examine any person under oath or affirmation, issue subpoenas requiring the attendance and giving of testimony of witnesses, require the production of any books, papers, documents, or other evidence which may contribute to the reparations officer's ability to determine particular reparation awards;
- (4) determine who is a victim or dependent;
- (5) award reparations or other benefits determined to be due under this chapter and the rules of the board;
- (6) take notice of judicially recognized facts and general, technical, and scientific facts within their specialized knowledge;
- (7) advise and assist the board in developing policies recognizing the rights, needs, and interests of crime victims;
- (8) render periodic reports as requested by the board concerning:
 - (a) the officers' activities; and
 - (b) the manner in which the rights, needs, and interests of crime victims are being addressed by the state's criminal justice system;
- (9) establish priorities for assisting elderly victims of crime or those victims facing extraordinary hardships;
- (10) cooperate with the Commission on Criminal and Juvenile Justice to develop information regarding crime victims' problems and programs; and
- (11) assist the director in publicizing the provisions of the Utah Office for Victims of Crime, including the procedures for obtaining reparation, and in encouraging law enforcement agencies, health providers, and other related officials to take reasonable care to ensure that victims are informed about the provisions of this chapter and the procedure for applying for reparation.

Amended by Chapter 131, 2011 General Session

63M-7-509 Grounds for eligibility.

In order to be eligible for a reparations award under this chapter:

- (1) The claimant shall be:
 - (a) a victim of criminally injurious conduct;
 - (b) a dependent of a deceased victim of criminally injurious conduct; or
 - (c) a representative acting on behalf of one of the above.
- (2)

- (a) The criminally injurious conduct shall have occurred in Utah, except as provided in Subsection (2)(b).
- (b) If a Utah resident suffers injury or death as a result of criminally injurious conduct inflicted in a state, territory, or country which does not provide a crime victims' compensation program, that person shall receive the same consideration under this chapter as if the criminally injurious conduct occurred in this state.
- (3) The application shall be made in writing in a form that conforms substantially to that prescribed by the board.
- (4) The criminally injurious conduct shall be reported to a law enforcement officer, in the law enforcement officer's capacity as a law enforcement officer, or other federal or state investigative agencies.
- (5)
 - (a) The claimant or victim shall cooperate with the appropriate law enforcement agencies and prosecuting attorneys in their efforts to apprehend or convict the perpetrator of the alleged offense.
 - (b) An award to a victim may be made whether any person is arrested, prosecuted, or convicted of the criminally injurious conduct giving rise to the claim.
- (6) The criminally injurious conduct shall have occurred after December 31, 1986.

Amended by Chapter 339, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-510 Ineligible persons -- Fraudulent claims -- Penalties.

- (1) The following individuals are not eligible to receive an award of reparations:
 - (a) persons who do not meet all of the provisions set forth in Section 63M-7-509;
 - (b) the offender;
 - (c) an accomplice of the offender;
 - (d) any person whose receipt of an award would unjustly benefit the offender, accomplice, or other person reasonably suspected of participating in the offense;
 - (e) the victim of a motor vehicle injury who was the owner or operator of the motor vehicle and was not at the time of the injury in compliance with the state motor vehicle insurance laws;
 - (f) any convicted offender serving a sentence of imprisonment in any prison or jail or residing in any other correctional facility;
 - (g) all persons who are on probation or parole if the circumstances surrounding the offense of which they are victims constitute a violation of their parole or probation; and
 - (h) any person whose injuries are the result of criminally injurious conduct that occurred in a prison, jail, or any other correctional facility while the person was incarcerated.
- (2) A person who knowingly submits a fraudulent claim for reparations or who knowingly misrepresents material facts in making a claim, and who receives an award based on that claim, is guilty of an offense, based on the following award amounts:
 - (a) for value under \$500, a class B misdemeanor;
 - (b) for value equal to or greater than \$500, but less than \$1,500, a class A misdemeanor;
 - (c) for value equal to or greater than \$1,500, but less than \$5,000, a third degree felony; and
 - (d) for value equal to or greater than \$5,000, a second degree felony.
- (3) A person who submits a claim described in Subsection (2) but receives no award based on that claim is guilty of a class B misdemeanor.

- (4) The state attorney general may prosecute violations under this section or may make arrangements with county attorneys for the prosecution of violations under this section when the attorney general cannot conveniently prosecute.
- (5) The state may also bring a civil action against a claimant who receives reparation payments that are later found to be unjustified and who does not return to the Crime Victim Reparations Fund the unjustified amount.

Amended by Chapter 118, 2013 General Session

63M-7-511 Compensable losses and amounts.

A reparations award under this chapter may be made if:

- (1) the reparations officer finds the claim satisfies the requirements for the award under the provisions of this chapter and the rules of the board;
- (2) money is available in the fund;
- (3) the person for whom the award of reparations is to be paid is otherwise eligible under this part; and
- (4) the claim is for an allowable expense incurred by the victim, as follows:
 - (a) reasonable and necessary charges incurred for products, services, and accommodations;
 - (b) inpatient and outpatient medical treatment and physical therapy, subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (c) mental health counseling which:
 - (i) is set forth in a mental health treatment plan which has been approved prior to any payment by a reparations officer; and
 - (ii) qualifies within any further rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (d) actual loss of past earnings and anticipated loss of future earnings because of a death or disability resulting from the personal injury at a rate not to exceed 66-2/3% of the person's weekly gross salary or wages or the maximum amount allowed under the state workers' compensation statute;
 - (e) care of minor children enabling a victim or spouse of a victim, but not both of them, to continue gainful employment at a rate per child per week as determined under rules established by the board;
 - (f) funeral and burial expenses for death caused by the criminally injurious conduct, subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (g) loss of support to the dependent or dependents not otherwise compensated for a pecuniary loss for personal injury, for as long as the dependence would have existed had the victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the maximum amount allowed under the state workers' compensation statute, whichever is less;
 - (h) personal property necessary and essential to the health or safety of the victim as defined by rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
 - (i) medical examinations as defined in Section 63M-7-502, subject to rules promulgated by the board pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which may allow for exemptions from Sections 63M-7-509, 63M-7-512, and 63M-7-513.

Amended by Chapter 342, 2011 General Session

63M-7-511.5 Limitation of awards.

- (1)
 - (a) Except as provided in Subsection (1)(b), an award of reparations may not exceed \$25,000 in the aggregate.
 - (b)
 - (i) In claims involving homicide, attempted homicide, aggravated assault, or DUI offenses, an award of reparations may not exceed \$50,000 in the aggregate.
 - (ii) Reparations for nonmedical expenses incurred as a result of the homicide, attempted homicide, aggravated assault, or DUI may not exceed \$25,000.
- (2)
 - (a) Awards of reparations to secondary victims shall be paid from the victims' maximum award amount provided in Subsection (1).
 - (b) When it appears that allowable expenses for the victim and secondary victims will exceed the maximum award amount provided in Subsection (1), the expenses of the victim shall be paid first unless otherwise requested by the claimant.
 - (c) Priority of payment among multiple secondary victims on a single claim shall be determined by the reparations officer.

Enacted by Chapter 339, 2008 General Session

63M-7-512 Reparations reduction.

- (1) Reparations otherwise payable to a claimant may be reduced or denied as follows:
 - (a) the economic loss upon which the claim is based has been or could be recouped from other persons, including collateral sources;
 - (b) the reparations officer considers the claim unreasonable because of the misconduct of the claimant or of a victim through whom the claimant claims; or
 - (c) the victim did not use a facility or health care provider which would be covered by a collateral source.
- (2) When two or more dependents are entitled to an award as a result of a victim's death, the award shall be apportioned by the reparations officer among the dependents.

Amended by Chapter 339, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-513 Collateral sources.

- (1) Collateral source shall include any source of benefits or advantages for economic loss otherwise reparable under this chapter which the victim or claimant has received, or which is readily available to the victim from:
 - (a) the offender;
 - (b) the insurance of the offender;
 - (c) the United States government or any of its agencies, a state or any of its political subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory state-funded programs;
 - (d) social security, Medicare, and Medicaid;
 - (e) state-required temporary nonoccupational income replacement insurance or disability income insurance;
 - (f) workers' compensation;
 - (g) wage continuation programs of any employer;

- (h) proceeds of a contract of insurance payable to the victim for the loss the victim sustained because of the criminally injurious conduct;
 - (i) a contract providing prepaid hospital and other health care services or benefits for disability; or
 - (j) veteran's benefits, including veteran's hospitalization benefits.
- (2)
- (a) An order of restitution shall not be considered readily available as a collateral source.
 - (b) Receipt of an award of reparations under this chapter shall be considered an assignment of the victim's rights to restitution from the offender.
- (3) The victim shall not discharge a claim against a person or entity without the state's written permission and shall fully cooperate with the state in pursuing its right of reimbursement, including providing the state with any evidence in the victim's possession.
- (4) The state's right of reimbursement applies regardless of whether the victim has been fully compensated for the victim's losses.
- (5) Notwithstanding the collateral source provisions in Subsection (1) and Subsection 63M-7-512(1)(a), a victim of a sexual offense who requests testing of himself may be reimbursed for the costs of the HIV test only as provided in Subsection 76-5-503(4).

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-514 Notification of claimant -- Suspension of proceedings.

- (1) The Utah Office for Victims of Crime shall immediately notify the claimant in writing of any award and shall forward to the Division of Finance a certified copy of the award and a warrant request for the amount of the award. The Division of Finance shall pay the claimant the amount submitted to the division, out of the fund. If money in the fund is temporarily depleted, claimants approved to receive awards shall be placed on a waiting list and shall receive their awards as funds are available in the order in which their awards were approved.
- (2) The reparations officer may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent.

Amended by Chapter 131, 2011 General Session

Amended by Chapter 342, 2011 General Session

63M-7-515 Rules for contested claims -- Exemption from Administrative Procedures Act.

- (1) Rules for procedures for contested determinations by a reparations officer shall be adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) The Utah Office for Victims of Crime is exempt from Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 131, 2011 General Session

63M-7-516 Waiver of privilege.

- (1) A victim filing a claim under the provisions of this chapter shall be considered to have waived any privilege as to communications or records relevant to an issue of the physical, mental, or emotional conditions of the victim except for the attorney-client privilege. The waiver shall apply only to reparations officers, the director, the board, and legal counsel.
- (2) The claimant may be required to supply any additional medical or psychological reports available relating to the injury or death for which compensation is claimed.

- (3) The reparations officer hearing a claim or an appeal from a claim shall make available to the claimant a copy of the report. If the victim is deceased, the director or the director's appointee, on request, shall furnish the claimant a copy of the report unless dissemination of that copy is prohibited by law.

Amended by Chapter 131, 2011 General Session

63M-7-517 Additional testing.

- (1) If the mental, physical, or emotional condition of a victim is material to a claim, the reparations officer, director, or chair of the board who hears the claim or the appeal may order the claimant to submit to a mental or physical examination by a physician or psychologist and may recommend to the court to order an autopsy of a deceased victim.
- (2) Any order for additional examination shall be for good cause shown and shall provide notice to the person to be examined and the person's representative.
- (3) All reports from additional examinations shall set out findings, including results of all tests made, diagnoses, prognoses, other conclusions, and reports of earlier examinations of the same conditions.
- (4) A copy of the report shall be made available to the victim or the representative of the victim unless dissemination of that copy is prohibited by law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-518 Failure to comply.

If a person refuses to comply with an order under this chapter or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the director or reparations officer may make any appropriate determination including denial of the claim.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-519 Assignment of recovery -- Reimbursement.

- (1) By accepting an award of reparations, the victim automatically assigns to the state, subject to the provisions of Subsection (2), all claims against any third party to the lesser of:
 - (a) the amount paid by the state; or
 - (b) the amount recovered from the third party.
- (2) The board, with the concurrence of the director, may reduce the state's right of reimbursement if it is determined that:
 - (a) the reduction will benefit the fund; or
 - (b) the victim has ongoing expenses related to the offense upon which the claim is based and the benefit to the victim of reducing the state's right of reimbursement exceeds the benefit to the state of receiving full reimbursement.
- (3) The state reserves the right to make a claim for reimbursement on behalf of the victim and the victim may not impair the state's claim or the state's right of reimbursement.

Amended by Chapter 339, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-521 Award -- Payment methods -- Claims against the award.

- (1) The reparations officer may provide for the payment of an award in a lump sum or in installments. The part of an award equal to the amount of economic loss accrued to the date of the award shall be paid in a lump sum. An award of allowable expense that would accrue after an initial award is made may not be paid in a lump sum. Except as provided in Subsection (2), the part of an award that may not be paid in a lump sum shall be paid in installments.
- (2) At the request of the claimant, the reparations officer may convert future economic loss installment payments, other than allowable expense, to a lump sum payment, discounted to present value, but only upon a finding by the officer that the award in a lump sum will promote the interests of the claimant.
- (3) An award for future economic loss payable in installments may be made only for a period for which the reparations officer can reasonably determine future economic loss. The reparations officer may reconsider and modify an award for future economic loss payable in installments, upon the reparations officer's finding that a material and substantial change of circumstances has occurred.
- (4) An award is not subject to execution, attachment, or garnishment, except that an award for allowable expense is not exempt from a claim of a creditor to the extent that the creditor provided products, services, or accommodations, the costs of which are included in the award.
- (5) An assignment or agreement to assign an award of reparations for loss accruing in the future is unenforceable, except:
 - (a) an assignment of an award of reparations for work loss to secure payment of alimony, maintenance, or child support;
 - (b) an assignment of an award of reparations for allowable expense to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee; or
 - (c) an assignment to repay a loan obtained to pay for the obligations or expenses described in Subsection (5)(a) or (b).

Amended by Chapter 339, 2008 General Session

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-521.5 Payments to medical providers.

- (1) Except as provided in Subsection (2), a medical service provider who accepts payment from the office shall agree to accept payments as payment in full on behalf of the victim or claimant. The medical service provider may not attempt to collect further payment from the victim or the claimant for services for which the office has made payment.
- (2) In the event the office is unable to make full payment in accordance with its rules, the medical service provider may collect from the victim or claimant, but not more than the amount the provider would have received from the office.
- (3) The office may:
 - (a) use the fee schedule utilized by the Utah Public Employees Health Plan or any other fee schedule adopted by the board; and
 - (b) make rules necessary to implement the fee schedule adopted in accordance with this section.

Enacted by Chapter 339, 2008 General Session

63M-7-522 Emergency award.

If the reparations officer determines that the claimant will suffer financial hardship unless an emergency award is made, and it appears likely that a final award will be made, an amount may

be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award. The board may limit emergency awards to any amount it considers necessary.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-523 Review of award decision.

The reparations officer shall review at least annually every award being paid in installments. An order on review of an award does not require refund of amounts previously paid unless the award was obtained by fraud or a material mistake of fact.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-524 Attorney fees.

- (1) The claims procedures shall be sufficiently simple that the assistance of an attorney is unnecessary, and no attorney fees shall be paid for the assistance of an attorney or any other representative in filing the claim or providing information to the reparations officer.
- (2) Attorney fees may be granted in the following circumstances and shall be paid out of the reparations award not to exceed 15% of the amount of the reparations award:
 - (a) when an award has been denied and, after a hearing, the decision to deny is overturned; or
 - (b) when minor dependents of a deceased victim require assistance in establishing a trust or determining a guardian.
- (3) An attorney or any other person providing assistance in a reparations claim, who contracts for or receives sums not allowed under this chapter, is guilty of a class B misdemeanor. This provision shall not extend to attorneys who assist the victim in filing a civil action against the perpetrator.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-525 Purpose -- Not entitlement program.

- (1) The purpose of the Utah Office for Victims of Crime is to assist victims of criminally injurious conduct who may be eligible for assistance from the Crime Victim Reparations Fund. Reparation to a victim is limited to the money available in the fund.
- (2) This program is not an entitlement program. Awards may be limited or denied as determined appropriate by the board. Failure to grant an award does not create a cause of action against the Utah Office for Victims of Crime, the state, or any of its subdivisions. There is no right to judicial review over the decision whether or not to grant an award.
- (3) A cause of action based on a failure to give or receive the notice required by this chapter does not accrue to any person against the state, any of its agencies or local subdivisions, any of their law enforcement officers or other agents or employees, or any health care or medical provider or its agents or employees. The failure does not affect or alter any requirement for filing or payment of a claim.

Amended by Chapter 131, 2011 General Session

Part 6

Utah Council on Victims of Crime

63M-7-601 Creation -- Members -- Chair.

- (1) There is created within the governor's office the Utah Council on Victims of Crime.
- (2) The Utah Council on Victims of Crime shall be composed of 24 voting members as follows:
 - (a) a representative of the Commission on Criminal and Juvenile Justice appointed by the executive director;
 - (b) a representative of the Department of Corrections appointed by the executive director;
 - (c) a representative of the Board of Pardons and Parole appointed by the chair;
 - (d) a representative of the Department of Public Safety appointed by the commissioner;
 - (e) a representative of the Division of Juvenile Justice Services appointed by the director;
 - (f) a representative of the Utah Office for Victims of Crime appointed by the director;
 - (g) a representative of the Office of the Attorney General appointed by the attorney general;
 - (h) a representative of the United States Attorney for the district of Utah appointed by the United States Attorney;
 - (i) a professional or volunteer working in the area of violence against women and families appointed by the governor;
 - (j) the chair of each judicial district's victims' rights committee;
 - (k) the following members appointed to serve four-year terms:
 - (i) a representative of the Statewide Association of Public Attorneys appointed by that association;
 - (ii) a representative of the Utah Chiefs of Police Association appointed by the president of that association;
 - (iii) a representative of the Utah Sheriffs' Association appointed by the president of that association;
 - (iv) a representative of a Children's Justice Center appointed by the Advisory Board on Children's Justice; and
 - (v) a citizen representative appointed by the governor; and
 - (l) the following members appointed by the members in Subsections (2)(a) through (2)(k) to serve four-year terms:
 - (i) an individual who works professionally with victims of crime; and
 - (ii) a victim of crime.
- (3) The council shall annually elect one member to serve as chair.

Amended by Chapter 131, 2011 General Session

63M-7-602 Reappointment -- Vacancies.

- (1) Members appointed to serve four-year terms shall be eligible for reappointment one time.
- (2) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-7-603 Duties.

- (1) The council shall:
 - (a) make recommendations to the Legislature, the governor, and the Judicial Council on the following:

- (i) enforcing existing rights of victims of crime;
 - (ii) enhancing rights of victims of crime;
 - (iii) the role of victims of crime in the criminal justice system;
 - (iv) victim restitution;
 - (v) educating and training criminal justice professionals on the rights of victims of crime; and
 - (vi) enhancing services to victims of crimes;
 - (b) provide training on the rights of victims of crime; and
 - (c) establish a subcommittee to consider complaints not resolved by the Victims' Rights Committee established in Section 77-37-5.
- (2) The council:
- (a) shall advocate the adoption, repeal, or modification of laws or proposed legislation in the interest of victims of crime;
 - (b) may establish additional subcommittees to assist in accomplishing its duties; and
 - (c) shall select and appoint persons pursuant to the provisions of Section 77-37-5 to act as chairpersons of the judicial district victims' rights committees and provide assistance to the committees in their operations.

Amended by Chapter 82, 2010 General Session

63M-7-604 Member expenses.

A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

- (1) Section 63A-3-106;
- (2) Section 63A-3-107; and
- (3) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Repealed and Re-enacted by Chapter 286, 2010 General Session

63M-7-605 Staffing.

The Commission on Criminal and Juvenile Justice shall provide staff to the council and any subcommittees established by the council.

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 10

Serious Habitual Offender Comprehensive Action Program (SHOCAP) Act

Part 1

General Provisions

63M-10-101 Title.

This chapter is known as the "Serious Habitual Offender Comprehensive Action Program (SHOCAP) Act."

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2

Serious Habitual Offender Comprehensive Action Program

63M-10-201 Creation -- Purpose -- Administration -- Access.

- (1) There is created the Serious Habitual Offender Comprehensive Action Program (SHOCAP) to establish a SHOCAP Database to identify and track youthful offenders in order to assist agencies in providing collaborative and comprehensive services to them.
- (2) The database shall be administered by the Administrative Office of the Courts with information contributed by the following agencies:
 - (a) the State Office of Education, including all school districts;
 - (b) the Department of Health;
 - (c) the Department of Human Services, including all county mental health agencies;
 - (d) the Department of Public Safety;
 - (e) all county and municipal law enforcement agencies; and
 - (f) all county and district attorney offices.
- (3) The database shall be maintained in accordance with guidelines established by the Administrative Office of the Courts so that the agencies listed in Subsection (2) can efficiently access the database.
- (4) Information provided by schools in compliance with the provisions of this chapter is authorized under the Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99.
- (5) Information in the database provided by an agency to the database is considered to be the property of the agency providing the information and retains any classification given it under Title 63G, Chapter 2, Government Records Access and Management Act.
- (6) Any person who knowingly releases or discloses information from the database for a purpose other than authorized by this chapter or to a person who is not entitled to it is guilty of a class B misdemeanor.
- (7) Neither the state nor the courts are liable to any person for gathering, managing, or using the information in the database as provided in this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-10-202 Establishment of local oversight committees -- Interagency information sharing.

- (1) The Commission on Criminal and Juvenile Justice shall administer the statewide SHOCAP oversight committee and provide periodic review of the programs.
- (2) Counties or municipalities implementing SHOCAP shall form a local oversight committee composed of the following persons, or their designees:
 - (a) the district juvenile court administrator;
 - (b) the superintendent of the local school district;
 - (c) the local county attorney;
 - (d) a member of the local county or municipal legislative body;
 - (e) the local county sheriff;
 - (f) a local chief of police;
 - (g) the local chief of probation for the Juvenile Court;
 - (h) the regional director of the Division of Juvenile Justice Services;
 - (i) the regional director of the Division of Child and Family Services;

- (j) a representative of a local public mental health provider; and
 - (k) any additional members considered appropriate by the local oversight committee.
- (3) The local oversight committee shall develop, implement, and periodically review the following:
- (a) standardized criteria as developed by the statewide SHOCAP oversight committee for determining who is a serious habitual offender (SHO);
 - (b) what information is needed on each offender for inclusion in the program;
 - (c) who will have access to the database;
 - (d) who will maintain the database and manage the information in the program;
 - (e) what the information in the database is to be used for; and
 - (f) penalties for improper use of the information in the database.
- (4) The local oversight committee shall develop a written interagency information sharing agreement to be signed by the chief executive officer of each of the agencies represented on the oversight committee. The sharing agreement shall include the provisions requiring that:
- (a) all records pertaining to a SHO be kept confidential;
 - (b) when a SHO is included in the SHOCAP program for the purposes of tracking and providing coordinated services, the local law enforcement agency or an agency designated by the interagency agreement shall as soon as reasonably possible notify the SHO and the parent or guardian of the SHO;
 - (c) the disclosure of information to other staff members of signatory agencies be made only to those staff members who provide direct services or supervision to the SHO; and
 - (d) all staff members of signatory agencies receiving confidential information concerning a SHO be subject to the confidentiality requirements of this chapter.
- (5) Notwithstanding any other statutory provision, staff members of signatory agencies who provide direct services or supervision to SHOCAP youth may distribute photographs of SHOCAP youth to other staff members of signatory agencies who provide direct services or supervision to SHOCAP youth.
- (6) The local oversight committee shall develop a program capable of maintaining the information determined to be necessary under Subsection (3).

Renumbered and Amended by Chapter 382, 2008 General Session

Chapter 11

Utah Commission on Aging

Part 1

General Provisions

63M-11-101 Title.

This chapter is known as "Utah Commission on Aging."

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-102 Creation -- Purpose.

- (1) In accordance with this chapter, there is created within the governor's office the Utah Commission on Aging.

- (2) The commission's purpose is to:
- (a) increase public and government understanding of the current and future needs of the state's aging population and how those needs may be most effectively and efficiently met;
 - (b) study, evaluate, and report on the projected impact that the state's increasing aging population will have on:
 - (i) government services;
 - (ii) health services;
 - (iii) social services;
 - (iv) the economy; and
 - (v) society in general;
 - (c) identify and recommend implementation of specific policies, procedures, and programs to respond to the needs and impact of the aging population relating to:
 - (i) government services;
 - (ii) health services;
 - (iii) social services;
 - (iv) the economy; and
 - (v) society in general;
 - (d) facilitate coordination of the functions of public and private entities concerned with the aging population; and
 - (e) accomplish the duties enumerated in Section 63M-11-203.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-103 Definitions.

As used in this chapter:

- (1) "Aging" and "aged" are as defined in Section 62A-3-101.
- (2) "Center on Aging" means the Center on Aging within the University of Utah.
- (3) "Commission" means the Utah Commission on Aging, created in Section 63M-11-102.

Renumbered and Amended by Chapter 382, 2008 General Session

Part 2 Commission

63M-11-201 Composition -- Appointments -- Terms -- Removal.

- (1) The commission shall be composed of 21 voting members as follows:
- (a) one senator, appointed by the president of the Senate;
 - (b) one representative, appointed by the speaker of the House of Representatives;
 - (c) the executive director of the Department of Health;
 - (d) the executive director of the Department of Human Services;
 - (e) the executive director of the Governor's Office of Economic Development;
 - (f) the executive director of the Department of Workforce Services; and
 - (g) 15 voting members, appointed by the governor, representing each of the following:
 - (i) the Utah Association of Area Agencies on Aging;
 - (ii) higher education in Utah;
 - (iii) the business community;

- (iv) the Utah Association of Counties;
 - (v) the Utah League of Cities and Towns;
 - (vi) charitable organizations;
 - (vii) the health care provider industry;
 - (viii) financial institutions;
 - (ix) the legal profession;
 - (x) the public safety sector;
 - (xi) public transportation;
 - (xii) ethnic minorities;
 - (xiii) the industry that provides long-term care for the elderly;
 - (xiv) organizations or associations that advocate for the aging population; and
 - (xv) the general public.
- (2)
- (a) A member appointed under Subsection (1)(g) shall serve a two-year term.
 - (b) Notwithstanding the term requirements of Subsection (2)(a), the governor may adjust the length of the initial commission members' terms to ensure that the terms are staggered so that approximately 1/2 of the members appointed under Subsection (1)(g) are appointed each year.
 - (c) When, for any reason, a vacancy occurs in a position appointed by the governor under Subsection (1)(g), the governor shall appoint a person to fill the vacancy for the unexpired term of the commission member being replaced.
 - (d) Members appointed under Subsection (1)(g) may be removed by the governor for cause.
 - (e) A member appointed under Subsection (1)(g) shall be removed from the commission and replaced by the governor if the member is absent for three consecutive meetings of the commission without being excused by the chair of the commission.
- (3) In appointing the members under Subsection (1)(g), the governor shall:
- (a) take into account the geographical makeup of the commission; and
 - (b) strive to appoint members who are knowledgeable or have an interest in issues relating to the aging population.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-202 Executive director -- Qualifications -- Appointment -- Functions.

- (1)
- (a) Subject to Subsections (1)(b) and (c), the executive director of the Center on Aging shall appoint an executive director of the commission.
 - (b) The executive director appointed under Subsection (1)(a) shall be a person knowledgeable and experienced in matters relating to:
 - (i) management; and
 - (ii) the aging population.
 - (c) The appointment described in Subsection (1)(a) is not effective until ratified by the governor.
- (2) The executive director of the commission, under the direction of the commission and the executive director of the Center on Aging, shall administer the duties of the commission.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-203 Duties and powers of commission.

- (1) The commission shall:

- (a) fulfill the commission's purposes as listed in Section 63M-11-102;
 - (b) facilitate the communication and coordination of public and private entities that provide services to the aging population;
 - (c) study, evaluate, and report on the status and effectiveness of policies, procedures, and programs that provide services to the aging population;
 - (d) study and evaluate the policies, procedures, and programs implemented by other states that address the needs of the aging population;
 - (e) facilitate and conduct the research and study of issues related to aging;
 - (f) provide a forum for public comment on issues related to aging;
 - (g) provide public information on the aging population and the services available to the aging population;
 - (h) facilitate the provision of services to the aging population from the public and private sectors; and
 - (i) encourage state and local governments to analyze, plan, and prepare for the impacts of the aging population on services and operations.
- (2) To accomplish its duties, the commission may:
- (a) request and receive from any state or local governmental agency or institution, summary information relating to the aging population, including:
 - (i) reports;
 - (ii) audits;
 - (iii) projections; and
 - (iv) statistics;
 - (b) apply for and accept grants or donations for uses consistent with the duties of the commission from public or private sources; and
 - (c) appoint special committees to advise and assist the commission.
- (3) All funds received under Subsection (2)(b) shall be:
- (a) accounted for and expended in compliance with the requirements of federal and state law; and
 - (b) continuously available to the commission to carry out the commission's duties.
- (4)
- (a) Members of a special committee described in Subsection (2)(c):
 - (i) shall be appointed by the commission;
 - (ii) may be:
 - (A) members of the commission; or
 - (B) individuals from the private or public sector; and
 - (iii) notwithstanding Section 63M-11-206, shall not receive any reimbursement or pay for any work done in relation to the special committee.
 - (b) A special committee described in Subsection (2)(c) shall report to the commission on the progress of the special committee.
- (5) This chapter does not diminish the planning authority conferred on state, regional, and local governments by existing law.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-204 Annual report by the commission.

- (1) The commission shall annually prepare and publish a report directed to the:
- (a) governor; and
 - (b) Health and Human Services Interim Committee.

- (2) The report described in Subsection (1) shall:
 - (a) describe how the commission fulfilled its statutory purposes and duties during the year; and
 - (b) contain recommendations on how the state should act to address issues relating to the aging population.

Amended by Chapter 323, 2010 General Session

63M-11-205 Appointment of chair -- Meetings.

- (1) The governor shall appoint a member of the commission to serve as chair.
- (2)
 - (a) Subject to the other provisions of this Subsection (2), the chair is responsible for the call and conduct of meetings.
 - (b) The chair shall call and hold meetings of the commission at least bimonthly.
 - (c) One of the bimonthly meetings described in Subsection (2)(b) shall be held while the Legislature is convened in its annual session.
 - (d) One or more additional meetings may be called upon request by a majority of the commission's members.
- (3)
 - (a) A majority of the members of the commission constitute a quorum.
 - (b) The action of a majority of a quorum constitutes the action of the commission.

Renumbered and Amended by Chapter 382, 2008 General Session

63M-11-206 Members serve without pay -- Reimbursement for expenses.

- (1) A member who is not a legislator may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses as allowed in:
 - (a) Section 63A-3-106;
 - (b) Section 63A-3-107; and
 - (c) rules made by the Division of Finance according to Sections 63A-3-106 and 63A-3-107.
- (2) Compensation and expenses of a member who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title JR5, Legislative Compensation and Expenses.

Amended by Chapter 387, 2014 General Session

63M-11-207 Oversight -- Executive director salary -- Staff support -- Use of funds.

- (1) The Center on Aging shall:
 - (a) pay the salary, and oversee the performance of, the executive director of the commission;
 - (b) provide staff support for the executive director of the commission and the commission; and
 - (c) provide office space, furnishings, and supplies to the commission, the executive director of the commission, and support staff.
- (2) The funds appropriated by the Legislature for the commission may only be used for the purposes described in this chapter.

Renumbered and Amended by Chapter 382, 2008 General Session